

EQUALITY ACT 2010: A GUIDE FOR ADVOCATES

Background

2020 marks the 10th anniversary of the Equality Act 2010.¹ The Act consolidated and enhanced the anti-discrimination laws we previously had in place, including the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995.² It applies to England, Scotland, Wales and, in some parts, to Northern Ireland.³

Inequality is a dominant feature of the UK and its adverse effects on children and young people are well documented. Larger families, lone-parent families, families affected by disability and those from black, Asian and minority ethnic communities all face higher risks of poverty.⁴ The likelihood of a child entering care or being the subject of a child protection plan are strongly influenced by ethnicity and a family's socio-economic position.⁵ Over half of children in care who live in semi-independent accommodation are from black, Asian and minority ethnic communities and there are six times more unaccompanied asylum-seeking children living in semi-independent accommodation than other children in care.⁶ Gypsy, Roma and Traveller children and young people and those of Irish Heritage have the highest rates of school exclusions while 45 percent of all permanent exclusions are applied to

children and young people with special educational needs.⁷ Health inequalities affect many different groups of children.⁸ Children and young people from black, Asian and minority ethnic communities are over-represented within the criminal justice system, including in child prisons, with latest data showing that they make up more than half of the population within juvenile young offender institutions and secure training centres.⁹ Black young adults are also disproportionately affected by the police's 'stop and search' powers¹⁰ and are more likely to receive a caution or a conviction, and be sent to prison.¹¹ In its latest examination of UK's record of implementing the UN Convention on the Rights of the Child, the Committee on the Rights of the Child expressed serious concerns about the "inequality in children's enjoyment of their rights" and reiterated its previous recommendation to address as a matter of urgency the "intolerance of childhood", and "general negative public attitudes towards children [...] including in the media".¹² Negative public attitudes have also been documented in care experienced children and young people's accounts of social stigma, stereotyping and marginalisation they experience at school and in their communities.¹³

About this guide

Article 39 supports those who work with and for children and young people to know about, understand and use the law in their daily practice. Earlier in 2020, we held a webinar on the Equality Act 2010 for members of our Children and Young People's Advocates Network. We are very grateful to Karon Monaghan QC, Matrix Chambers, for

delivering a lecture on the Act, which inspired this guide.

We are also very grateful to solicitors Jonathan Boyle and Yara Ali-Adib who gave us very helpful feedback on an earlier draft of this guide, and to the Discrimination Law Association for connecting us.

Disclaimer:

- The information we provide is for general guidance. It is not legal advice.
- If you need legal advice, please contact an independent advocate or a solicitor.
- Article 39 tries its best to make sure information is accurate and up-to-date. However, we cannot guarantee this. We'd appreciate you letting us know if you notice any errors or out-of-date information: info@article39.org.uk

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Equality Act at a glance

The Equality Act:

- Does not call for equal treatment of everyone. Instead, it identifies specific (protected) characteristics that may place some individuals or groups at a disadvantage compared to those who don't share that characteristic. It makes provisions to mitigate against, alleviate or remove disadvantage.
- Concerns both lawful discrimination and unlawful discrimination. Discrimination can be lawful in certain, specified circumstances when it arises from offering 'better' treatment to some groups because of, or in connection with, a protected characteristic.
- Protects people against punitive or retaliatory treatment received as a result of challenging suspected or actual breaches of the Act. This is called 'victimisation' and is classed as prohibited conduct (unlawful discrimination).
- Contains a positive duty on public authorities, called the public sector equality duty (PSED), which requires them to have due regard to the need to eliminate discrimination, advance equality and foster good relations between different groups.

The Act is not without its limitations and shortcomings. It contains a large number of exceptions, many of which relate to children and young people. Moreover, some important provisions of the Act remain 'inactive' to this day.¹⁴ This applies to provisions on socio-economic inequalities¹⁵ and those on dual (combined) discrimination, both of which are significant from a human rights perspective because socio-economic inequality combined with other forms of discrimination (connected to age, gender or disability for example) inevitably deepens and entrenches inequalities.

The Human Rights Act 1998 offers additional avenues for challenging discrimination. It can strengthen Equality Act arguments but also offers a separate route for challenging discrimination which is not connected to one or more of the protected characteristics.¹⁶ For instance, in 2015 the Supreme Court found that a young child, Cameron Mathieson, had been discriminated against when his Disability Living Allowance was suspended after he had been in hospital for more than 84 days. That case was brought under the Human Rights Act, and also relied upon protection of the child's best interests provisions in the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities. Very sadly, Cameron had died by the time of the Supreme Court's decision though his parents were able to secure change for many other very disabled children.¹⁷

Protected characteristics

The concept of protected characteristics is one of the cornerstones of the Equality Act 2010. It relates to certain qualities, traits, criteria or attributes (characteristics) that distinguish individuals who have them from those who don't. The Act identifies and defines nine such characteristics and makes it unlawful for individuals or groups of individuals to be discriminated against (treated less favourably) because of these characteristics. The characteristics protected within the Equality Act 2010 are:

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

It is important to note that almost all protected characteristics are subject to some exceptions. It is therefore essential to consider protected characteristics in the context of specific types of discrimination and circumstances, as it is within these specified contexts that the Act grants protection. We highlight the key exemptions and limitations further on in this section and explain them in more detail in subsequent parts.

For the purposes of the Act, each protected characteristic is defined as follows:

Age is defined as belonging to a particular age group. An age group includes people of the same age (e.g. three year-olds) and people of a particular range of ages (e.g. 16-18-year-olds, those aged under 25 or those aged over 70). If people fall in the same age group, they share the protected characteristic of age.

Exceptions: There are many exceptions relating to age and especially children (0-18). They include:

- In the context of services and public functions, protection against discrimination applies to adults only (those under the age of 18 are not protected);
- Within schools, discrimination based on age is allowed (to enable different, age-appropriate treatment);
- Within employment, different age-based 'minimum' wages are permitted.

Disability is defined broadly as a "physical or mental impairment that has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities". Long-term is defined¹⁸ as lasting or likely to last for at least 12 months, or likely to last for the rest of one's life. If the impairment ceases to have a substantial adverse effect on normal day-to-day activities but is likely to recur in the future, then the person continues to enjoy protection under the Act.

Cancer, HIV and multiple sclerosis are each recognised as a disability under the Act, as is severe disfigurement. Finally, the fact that the impairment is under control through treatment, medication or aids (e.g. prosthesis or epilepsy medication) does not remove protections under the Act.

Exceptions: Secondary legislation lists conditions and impairments that are not considered a disability under the Act. This includes substance addictions and tendency to start fires.¹⁹

Gender reassignment is where a person is proposing to undergo, is undergoing or has undergone a process, or has started the process, of changing the physiological or other attributes of their sex. A trans person²⁰ who has just started the process enjoys the same protection as a person who has completed it.²¹ The binary definition of gender reassignment means that gender non-conforming people are not specifically recognised in the Act.

Marriage and civil partnership

covers being married or being in a civil partnership. Not being married or not being in a civil partnership is not protected under the Act, nor is being engaged to be married. Following divorce or dissolution of a civil partnership, protections associated with this specific characteristic cease.

Exceptions: There are two key exceptions that apply to marriage and civil partnership:

- In the context of the public sector equality duty (PSED), marriage and civil partnership is not included in the duty to advance equality and foster good relations;
- In the context of services and public functions, protection against discrimination does not cover marriage and civil partnership.

Pregnancy and maternity is defined in two different contexts – in non-work cases and work-cases.²² In the context of non-work cases, pregnancy and maternity covers the entire pregnancy, the period of 26 weeks following birth (live birth or stillbirth after 24 weeks of pregnancy) and breastfeeding in the 26 weeks following birth. In the context of work, protection encompasses pregnancy and pregnancy-related illness, as well as maternity leave (covering the entire period of pregnancy and statutory maternity leave).

Exceptions: Indirect discrimination provisions do not apply to pregnancy and maternity.

Race is defined as colour (e.g. being black or white), nationality (e.g. being British, Nigerian or Vietnamese) and ethnic or national origins (which is defined by shared history and cultural ties, e.g. belonging to a Gypsy, Roma or Traveller community or being a Sikh or a Jew). A racial group can comprise two or more distinct racial groups (e.g. being Black British or Hungarian Roma).

Religion or belief means any religion (e.g. Hinduism, Islam or Rastafarianism) as well as lack of religion. Belief means any religious or philosophical belief (such as atheism, pacifism or veganism) as well as lack of belief. Religion and belief are therefore defined broadly, in line with Article 9 of the European Convention on Human Rights which guarantees freedom of thought, conscience and religion (as long as religion has a clear structure and belief system). Denominations or sects within a religion are also protected (e.g. Shia and Sunni within Islam or Protestants and Catholics within Christianity).²³

Exceptions:

- In the context of services and public functions, protections against harassment do not cover religion or belief (but note that harassment within this context may amount to direct discrimination);
- Within primary and secondary schools, discrimination does not apply to religion or belief (the rationale for this is that schools should not have to provide faith specific education).

Sex relates to being a woman or a man, a girl or a boy. This characteristic is rooted in biology, not the social norms that define what we perceive or characterise as ‘feminine’ or ‘masculine’ behaviour (i.e. gender identity).

Exception:

- Men and boys cannot claim discrimination on the basis that women and girls are treated more favourably where this happens because of pregnancy or childbirth.

Sexual orientation covers a person’s sexual orientation towards persons of the same sex, persons of the opposite sex or persons of either sex. Asexual people are not protected by the Act.

Exception:

- In the context of services and public functions, protections against harassment do not cover sexual orientation ((but note that harassment within this context may amount to direct discrimination)).

Prohibited conduct

The following types of discriminatory treatment are classed as ‘prohibited conduct’ in the Act:

- Direct discrimination
- Discrimination arising from a disability
- Indirect discrimination
- Duty to make adjustments
- Harassment
- Victimisation

It may be confusing to see ‘duty to make adjustments’, which sounds positive and desirable, labelled as ‘prohibited conduct’ and listed alongside five other terms in the Act that connote negative actions or behaviours. It may be helpful to think of this as relating to the *failure* to do something, i.e. make adjustments.

There are certain circumstances when discrimination and treating someone or a group less favourably is not unlawful. They are:

- objective justification,
- positive action and
- genuine occupational requirement.

Objective justification or, using the wording of the Act, “**proportionate means of achieving a legitimate aim**” applies to three specific types of discrimination:

1. Direct discrimination based on the protected characteristic of age;²⁴
2. Discrimination arising from disability;²⁵ and
3. Indirect discrimination.²⁶

Broadly speaking, the aim must be real and genuine, there must be no other reasonable way of achieving the aim and the means used to achieve it must not be excessive (this is done by balancing the aim against the potential discrimination). Importantly, a desire to reduce costs is not a legitimate aim.²⁷

Positive action – see page20.

Genuine occupational requirement The Act recognises that in some cases having a specific protected characteristic is a requirement for the job.²⁸ Examples would be an organisation supporting women who have experienced male violence advertising for female support workers, or a mentoring scheme for black boys seeking to recruit male mentors from similar communities.

Direct discrimination

Direct discrimination takes place when one person (A) treats another person (B) less favourably (worse) because of a protected characteristic.

It does not matter if A wrongly assumes that B has a protected characteristic, but B does not have it – for example, if a person treated another less favourably because they wrongly assumed they are gay or pregnant.

Further, if A treats B less favourably because of a protected characteristic of someone B is associated with then that would still amount to direct discrimination. An example here would be treating a child less favourably because it is assumed their friend is from a Roma background.

Examples:

A youth worker does not inform 16-year-old Miriam about an upcoming weekend away because she assumes Miriam won't be able to participate in an overnight trip for boys and girls due to her faith. This is direct discrimination, regardless of whether Miriam is in fact of that faith.

A teacher recommends six year-old Marco is moved from his class, and all his friends, to a 'special needs class' after finding out that Marco's mum has a learning disability. This would be direct discrimination if the decision was purely based on Marco's mum being disabled.

The fact that the person who has discriminated shares the protected characteristic with the person claiming to be a victim of discrimination is irrelevant and the person said to have treated someone less favourably cannot use this as defence if a discrimination claim is made.

There are nuances that apply to direct discrimination in the context of specific protected characteristics:

- In relation to age, it is not discrimination if less favourable treatment is a proportionate means of achieving a legitimate aim (e.g. segregating children into different age groups for education or leisure-based activities; or targeting a project at a specific, narrow age group because local research shows a need for this).
- In relation to race, segregating groups or individuals is always direct discrimination; there is no need to prove less favourable treatment or any adverse effect of such treatment.

In relation to sex, men and boys cannot claim discrimination on the basis that women and girls are treated more favourably because of pregnancy or childbirth (e.g. a scheme that offers flexible learning to pregnant girls so that they can attend ante-natal appointments is not discriminatory against boys who have to follow a fixed timetable).

Case law example: direct discrimination on the grounds of race

In 2019, the High Court ruled that a couple had been directly discriminated against on the grounds of race by a local authority adoption service.²⁹ Sandeep and Reena Mander, a British couple of Indian Sikh heritage, approached their local authority wanting to adopt a child. After attending an introductory seminar for potential adopters and meeting with a social worker, they were informed that their application would not be progressed because of "lack of young Indian or Pakistani children available for placement" and because white couples would be given priority. Having unsuccessfully challenged the decision at the local authority and Local Government Ombudsman levels, the couple filed a race discrimination claim (which was supported by the Equality and Human Rights Commission). The High Court found that the claimants had received "less favourable treatment than would a comparable couple of a different ethnicity" and awarded them damages.

Discrimination arising from disability

The Act defines as discrimination arising from disability a situation or action where one person (A) treats another (person B) unfavourably not *because* of their disability but because of *something arising in consequence* of their disability.

For example:

Marvin, who is 19 and completing a gardening apprenticeship with his local council, was disciplined because he took what was seen as too many breaks during working hours. He successfully challenged this as discrimination arising from disability because his need for breaks arises from anaemia connected to sickle cell disease. His employer was informed about this during the recruitment process.

Unfavourable treatment can be justified but only if it can be shown to be a proportionate means of achieving a legitimate aim.

For example:

If Marvin was instead completing an early years apprenticeship and his (genuine and justified) need for frequent breaks led to health and safety concerns because this left young children unsupervised, or his absence compromised the required staff-to-children ratios, it might be justified for his employer to suggest a different role for him.

It is not discrimination arising from disability if the person who treated another unfavourably did not know, and could not reasonably have been expected to know, that the victim of the treatment had the disability.

Trans people undergoing transition (gender reassignment is a protected characteristic) are granted additional protections in the context of work. Absence from work connected to a trans person's gender reassignment cannot be treated less favourably (discriminated against) than other types of absence due to illness or injury.

Indirect discrimination

Indirect discrimination is one of the more complex parts of the Equality Act.

This covers instances where the same treatment of everyone disadvantages a group or individual with a protected characteristic.

Indirect discrimination takes place when certain rules or conditions (called in the Act "provision, criterion or practice", or PCP) are applied in the same way to everybody (as a blanket rule) and this has the effect of putting people with a protected characteristic at a particular disadvantage. Unless the PCP is a proportionate means of achieving a legitimate aim, it would amount to indirect discrimination.

Example of indirect discrimination:

A policy banning any headwear in photographs taken for official purposes (e.g. issuing a passport or a driving license) must accommodate exceptions for those people who use headwear for religious or cultural reasons (e.g. Muslim women, Sikh men).

Example of when indirect discrimination that would be justified as a proportionate means of achieving a legitimate aim:

A children's home is recruiting new staff and requires the ability to work evenings and nights. This might indirectly discriminate against people with childcare responsibilities (potentially affecting women more than men) but it would be justified considering the nature of the role and objectives of the service (i.e. overnight caring).

Case law example: indirect discrimination on the grounds of race

In 2011, the High Court ruled that an 11-year-old boy of African-Caribbean background had been indirectly discriminated against on the grounds of race by a school whose uniform policy banned cornrows.³⁰ The boy, who kept his hair in cornrows in accordance with his family tradition, was unable to take up his place at the school because the school's uniform policy would have required him to remove his cornrows, which he was not willing to do. Notably, while banning cornrows, the policy recognised the needs and rights of Sikh and Rastafarian students but did not make any allowance for other hair styles. The school argued that the policy was not discriminatory and that if indirect discrimination was found, this would be justified because making one exception would undermine the schools' 'zero tolerance policy' and its efforts to prevent unwanted influences such as "gang culture and pop culture". The High Court did not find this justification valid and ruled that the school had failed in its equality duty and that a rigid application of the said policy, with no room for exceptions for "cultural and family practice" reasons amounted to indirect racial discrimination.

Importantly, where a PCP (practice, rules or conditions) would have that effect if it were applied - but it has not actually been applied yet - it could still amount to indirect discrimination (unless justified).

Example:

A secure training centre (STC) introduces a new, time-limited requirement according to which all boys have to remain in their cells between 10am and 1pm on Saturdays due to planned maintenance work. But this is the time of the week that a local charity comes into the STC to run literacy sessions for boys with learning difficulties. This decision could place those children at a disadvantage and could be challenged even if the changes haven't yet been applied.

Exception: Indirect discrimination does not apply to pregnancy and maternity.

Duty to make adjustments

The duty to make adjustments comprises three requirements, each of which **applies where a disabled person is placed at a substantial disadvantage in relation to a particular issue in comparison with non-disabled people**. The requirements are:

1. Taking reasonable steps to change practice, rules or conditions (PCP). This requirement includes providing information in an accessible format.
2. Making changes to buildings (such as providing access), including removing and altering parts of buildings, where such changes are considered reasonable.
3. Providing auxiliary aids and services (such as computer software), which includes providing information in an accessible format.

Early years providers, schools, post-16 institutions, local authorities and other public services are all bound by the duty to make reasonable adjustments. Statutory guidance reminds us that:

*"This duty is anticipatory – it requires thought to be given in advance to what disabled children and young people might require and what adjustments might need to be made to prevent disadvantage."*³¹

Schools and local authority education providers are not required to make physical alterations as part of their duty to make adjustments, but they must prepare and implement an accessibility strategy³² that is aimed at increasing disabled students' participation, improving the physical environment and facilitating access to information. Governing bodies must also publish "information about the arrangements for the admission of disabled children, the steps taken to prevent disabled children being treated less favourably than others, the facilities provided to assist access of disabled children, and their accessibility plans".³³

Examples:

A local Children in Care Council (CiCC) is recruiting new members. After receiving an application from a 12-year-old girl who has restricted mobility and cannot climb stairs, the CiCC asks to have its meetings moved from the first to the ground-floor space to ensure full access.

A school runs a weekly reading and play session for under-fives in their catchment area. It's held in a large hall. There are regular breaks between activities where children can run about and play. The father of a two year-old boy who has *osteogenesis imperfecta* (brittle bone disease) asks for a safe area for his child during these breaks. In response, the school designates one supervised corner of the hall as a 'no running' area and equips it with appropriate toys and equipment.

Example: decision of the Local Government and Social Care Ombudsman

Ms X complained to the Local Government and Social Care Ombudsman (LGO) that her local authority failed to make reasonable adjustments for her mental health difficulties and that this prevented her full and informed participation in her daughter's care review meetings.³⁴ Before reaching the LGO, Ms X's complaint was reviewed by the council which said that it had made some adjustments (such as allowing her to make notes, bring a support person and not interrupting her when speaking) despite the fact that Ms X had "no formal diagnosis of her condition". The council said any further requests for reasonable adjustments were contingent on a "qualified diagnosis".

When investigating Ms X's complaint, the LGO confirmed that "there is no requirement in the Equality Act 2010 for a person to have a formal or "qualified" diagnosis of a health condition for the Council to make reasonable adjustments for that person. The Council must consider if a person has a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out day to day activities. The Council must then consider what adjustments may be necessary and should ask the person concerned what adjustments they require".

The LGO recommended training on the Equality Act 2010 and reasonable adjustments "for all children's services staff, social workers and managers who deal with the public" (November 2019).

Harassment

Under the Act, there are three types of harassment. They are all slightly different and rather complex, but they have one common ‘factor’ – that **the person who is perpetrating harassment does it to create an intimidating, hostile, degrading, humiliating or offensive environment for the victim or to violate the victim’s dignity.**

Harassment, therefore, can be either about wanting to achieve the harmful effect (purpose) or actually succeeding in causing harm (effect).

The three different types are:

1. If person A engages in unwanted conduct in relation to one or more of the following protected characteristics: age, disability, gender reassignment, race, religion/belief, sex or sexual orientation³⁵ and this is done with the purpose or effect described in the Act*; (see example A)
2. If person A engages in unwanted conduct of sexual nature and the conduct has the purpose or effect described in the Act*; (see example B)
3. If person A or another person treats person B less favourably because person B has either submitted to or rejected sexual harassment, or harassment related to the protected characteristics of sex or gender reassignment, and this treatment has the purpose or effect described in the Act*; (see example C)

* purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment or violating the victim’s dignity.

Example A:

A service manager makes flippant comments in a number of team meetings about immigrants’ negative impact on the availability of jobs for British people (connection to race, a protected characteristic). This creates a hostile environment for members of staff born outside the UK.

Example B:

An older colleague makes repeated comments about a young woman’s “great looks” and regularly asks for a goodbye kiss at the end of the working day. He says he’s only joking and sees her like a daughter. The young woman feels degraded.

Example C:

A co-worker refuses to address her colleague who is undergoing gender reassignment with her new name. She keeps using her old (male) name despite being explicitly asked not to do so.

Victimisation

Unlike other categories of prohibited conduct, victimisation is **not directly connected to protected characteristics. Instead, it relates to punitive or retaliatory treatment connected to protected acts**³⁶, which are defined as:

- Bringing proceedings to challenge a breach of the Equality Act;
- Giving evidence or information in connection with such proceedings; or
- Making an allegation or preparing to make an allegation about someone breaching the Act.

Victimisation occurs when one person (person A) subjects another (person B) to detriment (meaning harm, injury or disadvantage) because:

- B does or has done a protected act; or
- A believes or suspects that B has done or may do a protected act.

Only an individual can bring a claim for victimisation and any actions taken or information/evidence given as part of the protected act have to be done in good faith. This means that making a malicious allegation or deliberately providing wrong information (i.e. acting in bad faith) cannot form the basis of a victimisation claim.

Example: treatment amounting to victimisation

An advocate challenges a teacher who told Nadia, who is 15 years-old and pregnant, that she would not be able to continue attending classes as this sets a bad example and many parents will object to her coming into school. The school takes action and disciplines the teacher. Following this, another teacher tells Nadia that she has “ruined her colleague’s teaching record” and made her suicidal. This causes Nadia considerable upset and anxiety about attending that teacher’s class.

Yes, this is victimisation because Nadia has challenged, through her advocate, a breach of the Equality Act (direct discrimination because of pregnancy). This was done in good faith and, because of this action, she was treated badly.

Example: treatment not amounting to victimisation

Charlie, who is 11 and in care, makes a complaint against his social worker for not making arrangements for him to see and spend time with his younger brother. His advocate supports him to make and evidence the complaint. As a result of this complaint, things improve a great deal and the brothers have many good times together, but Charlie feels his social worker now treats him differently and he finds it harder to talk to him. He thinks the social worker is punishing him for his complaint.

This is not victimisation. Even though Charlie may be being subjected to detriment by the social worker (whether intentional or not), it is not because of a protected act as his complaint did not relate to a breach of the Equality Act.

Provision of services and public functions

The Act does not contain an exhaustive list of activities that are prohibited under the Act. This would be impossible. Instead, it sets out certain activities and circumstances in which different types of discrimination are outlawed. This includes two key, broad categories – provision of services and performance of public functions – both of which are highly relevant in the context of work with and for children and young people.

Remember:

There are various exceptions to rules that govern provision of services and public functions. Notably, only adults (those aged over 18) are protected from discrimination in the context of services and public functions. While seen by many as hugely problematic and unjust because of the exclusion of children as a specific age group, it is important to keep in mind that other protected characteristics provide valuable avenues for challenging discrimination experienced by children and young people. We address this further on in this section.

Provision of services concerns services that are offered by a person or body/organisation to members of the public, both for payment and for free. This includes supplying goods and facilities. Examples of services include shops, cinemas, restaurants, banks, swimming pools, libraries, drama groups, public transport and breakfast clubs. Services can be delivered by statutory, private (businesses) or third sector providers.

Public functions can be similar to services but, broadly speaking, concern public authorities (e.g. local councils, health trusts, police and prisons), as well as private or third sector bodies if they have been commissioned to perform public functions.

Examples of public functions are: managing school admissions, processing housing applications, managing care proceedings, assessing needs, Children Act 1989 or the Care Act 2014, providing school transport for disabled children, issuing fines for littering or collecting council tax payments.

The rules that govern services and public functions state that **it is unlawful to:**

- **Discriminate against a person because of a protected characteristic;**
- **Harass or victimise them when providing services or public functions; or**
- **Fail to make reasonable adjustments.**

Discrimination could take the form of applying different terms and conditions (e.g. charging some but not others for no good reason), withholding a service (e.g. refusing to serve a person in a shop) or terminating a service (e.g. forcing a person to get off a bus).

In some cases, treating some groups more favourably or differently than others will be lawful if it can be shown to be a proportionate means of achieving a legitimate aim. For example, offering a waiting area for women only where women would be reluctant to attend a particular clinic or health service with men present. Or, if a local authority knows it has a large number of refugee and asylum seeking families who have no recourse to public funds (NRPF) and research shows they are deterred from contacting public services because they fear repercussions, setting up a dedicated advice line staffed by trained workers that is only available to families with NRPF would be lawful.

Exceptions: The following are the key exceptions that apply to the provision of services and public functions:

- Children aged 0-17 are not protected³⁷ (which means discrimination and harassment based on age are lawful);
- Marriage and civil partnership is not protected (which means discrimination and harassment based on this protected characteristic is lawful);
- Harassment provisions don't cover religion or belief and sexual orientation (but remember that this has no bearing on the prohibition on direct and indirect discrimination).

It is also worth noting that foster carers are not bound by duties set out in services and public functions provisions (so that they can express a preference for fostering within e.g. a specific faith or age group).³⁸ This is because they are offering a service in their own household.

Examples: services and public functions and children aged 0-17

Two 14-year-olds are given 'on the spot' fines for littering in the park. They believe they were targeted because they are children as they saw adults littering in the same park without being challenged by community wardens. Unless there is a reason to believe they were targeted because of other protected characteristics (e.g. race or sex), they cannot claim discrimination. This is because children under the age of 18 are not protected as far as services and public functions are concerned.

A shopkeeper puts a sign on their door which says: 'No more than three youths in the store at a time'. It would not be possible to claim discrimination based on age under-18 but if it turns out that the shopkeeper treats groups of girls differently to groups of boys or treats black children less favourably than white children, this could be direct discrimination based on sex or race.

Schools and further education settings

The rules that apply to schools and further education settings are similar to those that govern services and public functions. They apply to all schools – including maintained and independent schools, academies, and faith schools – as well as further education providers. Again, some important exceptions must be noted in order to decide how best to challenge practice or policy that may be discriminatory.

In general, **it is unlawful to discriminate against, harass or victimise students.** These prohibitions apply as follows (and note there are some significant exceptions):

- **Age and marriage and civil partnership are not covered by the prohibition on discrimination and harassment.**
- Prohibition on discrimination, harassment and victimisation apply both to admissions and treatment once in school so decisions about admissions and exclusions, or practices such as off-rolling or isolation, should be scrutinised from an equality perspective. However, **the prohibition on harassment does not apply to the protected characteristics of gender reassignment, sexual orientation or religion or belief.**

- It is unlawful to victimise a child/student as a result of a protected act done by the parent/carer or sibling of the child/student. Even if the parent/carer or the sibling of the child does the protected act in bad faith, the child/student is still protected against victimisation so long as she/he was acting in good faith (i.e. not acting maliciously).
- Schools are bound by the duty to make reasonable adjustments (with the exception of making physical alterations but they must prepare and implement an accessibility strategy³⁹ that is aimed at increasing disabled students' participation, improving the physical environment and facilitating access to information). Governing bodies must also publish "information about the arrangements for the admission of disabled children, the steps taken to prevent disabled children being treated less favourably than others, the facilities provided to assist access of disabled children, and their accessibility plans".⁴⁰
- Prohibitions within the schools provisions of the Act (discrimination and harassment) do not apply to the curriculum. The rationale for this is that the Act should not "inhibit the ability of schools to include a full range of issues, ideas and materials in their syllabus and to expose pupils to thoughts and ideas of all kinds".⁴¹ The way the curriculum is taught, however, is not covered by this exception so discrimination or harassment in the way a teacher runs a class could be challenged.
- Additional provisions regulate single-sex schools and "schools with religious character".⁴²

Examples:

A lesbian Muslim student applies to participate in the upcoming student council elections, but her application is rejected citing a reason she disagrees with and considers unjust and against the school's own policy. She believes that she was rejected because she is Muslim and openly lesbian, so is angry and upset. While she would not be able to allege harassment on the grounds of sexual orientation or religion or belief because these protected characteristics are subject to exceptions within the context of her school, the refusal to consider her application could in fact be direct discrimination which is not exempt and could be claimed.

A woman made a complaint about a sports teacher whom she believes discriminates against her foster son in connection with his needs arising from a disability. If the boy is then subject to any detriment in connection to this complaint, this would be victimisation and he would enjoy protection under the Act.

A group discussion as part of a religious education class could not be challenged as discriminatory or constituting harassment by students who disagree with statements made or questions raised by other students about their faith (if they consider them offensive, for instance). This is because prohibitions within the schools provision do not apply to the curriculum. If, however, some children were prevented from delivering presentations as part of this discussion, discrimination could be taking place and could be challenged using the Act as the way the curriculum is delivered is not covered by the exception.

Advancing equality

Public Sector Equality Duty (PSED)

The PSED imposes a **three-part due regard duty on public authorities in respect of their performance of public functions**. Public functions cover activities such as managing school admissions, responding to complaints about children's social care, allocating social housing, providing healthcare appointments, conducting child protection conferences or providing assistance to children and families in need. Policy-making, at a local or national level, is also a public function.

The PSED specifies that a public authority must, in the exercise of their functions, have due regard to the need to:

1. **Eliminate** discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;
2. **Advance** equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This involves having due regard to the need to:
 - i. Remove or minimise disadvantages suffered by those with a protected characteristic;
 - ii. Take steps to meet the different needs of persons with a protected characteristic;
 - iii. Encourage those with a protected characteristic to participate in public life and other activitiesand
3. **Foster good relations** between persons who share a relevant protected characteristic and persons who do not share it. This involves having due regard to the need to tackle prejudice and promote understanding.

Remember:

PSED is a positive duty, which means public authorities must take active steps to work towards the achievement of these general equality objectives.

Remember:

PSED covers all protected characteristics as far as eliminating discrimination and any other prohibited conduct is concerned. However, the duty to have due regard to the need to advance equality and foster good relations does not cover marriage and civil partnership.

Schedule 19 of the Act includes a comprehensive list of all public authorities that are bound by the PSED. These include:

- Ministers and government departments
- Local authorities
- Schools (maintained and independent, including academies) and further education providers
- Police (including Police and Crime Commissioners)
- Children and Family Court Advisory and Support Service (Cafcass)
- NHS, clinical commissioning groups (CCGs) and the Care Quality Commission (CQC)
- Prisons and related inspectorates (e.g. Her Majesty's Inspectorate of Prisons and Chief Inspector of Probation) and the Youth Justice Board

In April 2020, the Metropolitan Police (Met) was successfully challenged by the family of a black autistic boy who argued that the Met failed in its PSED by not gathering, monitoring and addressing the equality implications of a policy that deployed officers in schools. The case raised concerns that the presence of police officers in schools might have “disproportionately negative consequences” for boys from black and minority ethnic communities and/or children with special educational needs and disabilities, “causing them to be drawn into the criminal justice system unnecessarily”. The challenge led to the Met agreeing to collect and analyse data on the equality implications of the schools’ policy.⁴³

During the 2020 Covid-19 pandemic, national guidance was successfully challenged for its alleged failure to consider equality implications on specific groups. The challenge concerned government guidance stating that people were only permitted to leave the house for exercise once a day. It was argued that this blanket policy failed to consider the needs of individuals (children and adults) who share the protected characteristic of disability, and have the need for more frequent outdoor exercise (which is connected to the protected characteristic of disability). The challenge was successful and led to changes to the guidance.⁴⁴

Importantly, persons and bodies who are not a public authority but who exercises public functions must also have due regard to these needs when performing their functions. An example of this would be a private or third sector nursery commissioned to provide free early years education or a large charity which is contracted to run a children’s health or social care service.

Exceptions: There are exceptions to the PSED, including a number that apply to children.⁴⁵

In relation to age, the PSED does not apply to:

- Schools and how they provide education and other “benefits, facilities and services”;
- Children’s homes and how they provide “accommodation, benefits, facilities or services”.

It is important to remember that these exceptions relate to the protected characteristic of age only (and then only applying to under-18s). **The fact that schools and children’s homes are not required to have due regard to the need to eliminate discrimination, advance equality of opportunity or foster good relations between children of different ages does not change their duty to comply with all aspects of the PSED as far as all other protected characteristics are concerned.**

Additionally, secondary legislation⁴⁶ requires public authorities to prepare and publish one or more specific and measurable objectives that they think they should achieve to advance their compliance with the PSED. These objectives should be published at least once every four years and this information should be accessible to the public. Click [here](#) to see an example of this.

Examples illustrating PSED age exceptions:

School C is not bound by the equality duty when it comes to advancing equality of opportunity or fostering good relations between children in Year 4 and those in Year 6. However, it is bound by the duty to (have due regard to the need to) eliminate discrimination, advance equality and foster good relations between black and white students, between students of different religions and none, and between disabled and non-disabled students.

An advocacy service has been commissioned to provide proactive, opt-out advocacy to all children and young people in a secure children’s home. A dedicated, private space is currently being arranged for meetings between children and their advocates. As part of its PSED, the secure children’s home must have due regard to the need to make it equally accessible to boys and girls and to ensure that disabled children have equal access to the service. It has to consider any specific cultural and faith needs when, for example, agreeing advocacy drop-in sessions. The Equality Act does not require it to consider the specific needs of different age groups because of the age exception. (There will, of course, be other ways of challenging unfair treatment on the basis of age. For example, the imposition of a minimum age to access advocacy could be challenged under the Children Act 1989, the Human Rights Act and the UN Convention on the Rights of the Child).

Due regard and the PSED:

The PSED requires public authorities to have “due regard” to the need to eliminate discrimination, advance equality and foster good relations in the exercise of their functions. The Act itself does not explain what due regard actually means but relevant case law provides valuable direction. The so-called ‘Brown principles’⁴⁷ clarify that having due regard to the PSED means that:

- Decision makers (i.e. public bodies) must be made aware of their duty to have due regard to the aims of the PSED. If there is no awareness of the aims, or if it is incomplete or incorrect, it would mean that due regard has not been given;
- The duty requires a conscious approach before and during the actions that might impact on equalities (rather than justifying decisions after they have been made);
- The duty should not be treated as a ‘box-ticking’ exercise but be completed “with rigour and an open mind”;
- The duty is a continuing obligation (rather than a one-off exercise);
- The duty cannot be delegated; and
- Those exercising public functions should keep an adequate record showing how the duty was considered as this encourages transparency and conscientiousness and is considered good practice.

Equality Impact Assessments and the PSED:

Equality Impact Assessments (EIAs) can go a long way in identifying and, where needed, mitigating against any adverse effects of decisions on protected groups and on vulnerable or marginalised groups more broadly.

While there is no actual requirement under the Equality Act to carry out EIAs, the courts have stressed their importance in determining whether a public authority has complied with its public sector equality duty – see examples below. Because of the lack of a specific, standalone requirement to conduct an EIA, public bodies can choose how they conduct them and what format EIAs take. While some might have EIA forms, and fixed sets of questions, others might choose to compile relevant evidence and use their analysis as the EIA. Importantly, lack of data should not serve as a reason not to conduct or to limit the scope of an EIA. On the contrary, lack of relevant equalities data (qualitative and quantitative) should incentivise the public authority to engage in data collection in order to build understanding, as without this it will be impossible to assess the likely impact of changes.

In January 2020, the Court of Appeal ruled that a local authority failed to comply with the PSED when it applied for an injunction that would effectively prevent the Gypsy and Traveller community from occupying (camping in) public spaces in the local area. The Gypsy and Traveller community is specifically protected under the Equality Act because it forms a distinct ethnic group. The Court ruled that such an injunction would prevent this community from exercising their right to pursue their traditional nomadic lifestyle. The court said: “There should be a proper engagement with the Gypsy and Traveller community and an assessment of the impact an injunction might have, taking into account their specific needs, vulnerabilities and different lifestyle. To this end, the carrying out of an equality impact assessment [...] should be considered good practice, as is the carrying out of welfare assessments of individual members of the community (especially children)”.⁴⁸

Example:

A local authority is considering the closure of a children’s home as part of a restructure of children’s social care provision in the area. A working group is established and tasked with undertaking an equality impact assessment to inform the decision. The exercise, which includes engaging with children who currently live in the home, reveals that there is no alternative accommodation available in the same area and forcing the children who currently live there to move could have a negative impact on family relationships, friendships and children’s education. It also transpires that several children who access local health and therapeutic services due to their disabilities and/or mental health needs would likely face difficulties in getting to their appointments because of limited transport links.

The first two reasons (i.e. family contact and education) are not protected under the Equality Act (and neither is age younger than 18 as far as services and public functions are concerned), and cannot be used to challenge the planned closure using the Equality Act. However, disability is a protected characteristic and, based on the likely adverse impact on disabled children (including those with mental health needs), the group recommends the children’s home remains open. (In this scenario, it would also be possible to challenge the closure using the European Convention on Human Rights – Article 14 combined with 8 – to defend the children’s right to family life.

Positive action

Positive action relates to measures which amount to more favourable treatment of certain groups who are known to suffer disadvantage. Positive action measures are designed to reduce inequality and can be taken only in specific circumstances set out in the Act. Any positive action measure must be a proportionate way of achieving the stated aim.

Firstly, if **persons who share a protected characteristic suffer a disadvantage** connected to the characteristic, positive action is lawful if its aim is to enable or encourage this group to overcome or minimise that disadvantage.

Example:

If care experienced girls and young women who become mothers are known to suffer greater socio-economic disadvantage, including increased risk of homelessness, it would be lawful to offer them additional financial support (with the aim of reducing socio-economic disadvantage).

Secondly, if **persons who share a protected characteristic have needs that are different** from the needs of persons who do not share it, positive action is lawful if its aim is to meet those needs.

Example:

If children are unable to consume certain foods for religious or cultural reasons, it would be lawful to prepare different meals specifically for them.

Thirdly, if **for persons who share a protected characteristic participation in an activity is disproportionately low**, positive action is lawful if its aim is to enable or encourage greater participation.

Example:

If take-up of free early years' education is disproportionately low for children from families where English is not the first language, it would be lawful to launch a targeted initiative to redress this (with the aim of boosting the participation of children from identified communities in early years education).

There are **additional provisions within the Act that allow for positive action specifically in the context of recruitment and promotion (Section 159)**. In broad terms, employers can lawfully take a protected characteristic into account when making recruitment or promotion decisions in order to redress disadvantage or under-representation. However, this cannot be a blanket policy and each situation has to be considered on its own merits.

Enforcement and redress

The Act specifies the time limits and the means of challenging breaches of the Act. Individuals (children and adults) can bring claims for breaches to county courts or employment tribunals (for work cases). Children and young people wishing to make a claim will need to be represented by a solicitor. In addition to issuing a decision about whether the Act has been breached or not, the courts can award financial compensation.

Breaches of the Act, including failure to comply with the PSED, can also be challenged by way of judicial review, a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. This will also require legal advice and representation.

The Equality and Human Rights Commission (EHRC)⁴⁹ has powers to enforce the provisions of the Equality Act.⁵⁰ The EHRC is also responsible for monitoring the effectiveness of the Act and may advise the government. It also has the power to conduct inquiries and investigations.⁵¹

Equality duty considerations are applicable to local statutory complaints procedures. **Statutory guidance on the Children Act 1989 complaints procedure, for example, reminds that:**

*“It is important that authorities seek to identify for the complaints procedure [...] that it is accessible equally to all sections of the community; whether any distinct needs exist amongst members of minority groups, for which special provision may be necessary; and that it does not inadvertently discriminate against any particular group”.*⁵²

Unresolved complaints about children’s social care that have reached Stage 3 of the statutory complaints procedure can be taken to the Local Government and Social Care Ombudsman who has the power to investigate maladministration and service failure connected to the Equality Act.

Using the Human Rights Act to challenge discrimination

The Human Rights Act (HRA) can be used to challenge discrimination. It can bolster a discrimination claim, whether informal (e.g. raising a concern with a public authority in a discussion or meeting) or formal (i.e. in court proceedings), by expanding and reinforcing the legal basis of the challenge.

Article 14 (prohibition of discrimination) of the European Convention on Human Rights (ECHR) states:

“The enjoyment of the rights and freedoms in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The HRA requires public authorities in the UK (which includes courts, tribunals and any persons or bodies performing public functions – schools, children’s social care, hospitals and prisons for example) to act in a way which is compatible with the rights and freedoms guaranteed in the ECHR.

Article 14 works only in combination with other articles of the ECHR. As it is not a standalone right, Article 14 is known informally as a ‘piggy-back’ right. The example on the right illustrates the use of Article 14 in combination with Article 8, the right to respect for private and family life.

This is very important as the scope of Article 14 and the grounds based on which discrimination can be challenged is slightly different than that set out in the Equality Act. This means that in situations where a characteristic is not protected under the Equality Act, the ECHR/HRA can offer an alternative basis for a challenge.

Case law example: using the ECHR to challenge discrimination.

In 2002, the High Court found that Manchester City Council had acted unlawfully in having a policy which paid short-term foster carers who were friends or relatives of the child a significantly lower rate than other foster carers. The families who brought the Human Rights Act claim argued that the policy did not comply with Article 14 of the European Convention on Human Rights (non-discrimination) and Article 8 (right to respect for private and family life). The judge recognised that local authorities could use discretion when setting the levels of fostering allowance, but any discretion had to be “applied to safeguard adequately the right to respect for family life in article 8 of the Convention, and to avoid discrimination in breach of article 14 of the Convention”. The judge also said that “the duty under Article 8 may in appropriate circumstances oblige the state (and hence Manchester) to take positive steps to secure respect for family life. The steps required to be taken by Manchester under Part III of the (Children) Act (1989) in relation to looked after children are a classic circumstance in which the Article 8 positive obligation comes into play [...] It follows that the obligation of Manchester under both the Children Act and the Convention is to take all appropriate positive steps [...] (subject to welfare considerations) to ensure that children should live with their families”.⁵³

What you can do in your practice

“Advocates should value and respect children and young people as individuals and challenge all types of unlawful discrimination.”

National Standards for the Provision of Children’s Advocacy Services (2002)

While in some cases, formal court action may be necessary, there are many other actions we can take to help challenge discrimination and encourage public authorities’ compliance with the public sector equality duty. These include:

- ✓ Having good knowledge and understanding of the Act to be able to identify situations where discrimination may be taking place.
- ✓ Reflecting on and assessing individual decisions affecting children and young people from an equality perspective. This involves keeping in mind any protected characteristic/s of the child or young person, identifying needs or disadvantage connected to protected characteristic/s and exploring whether these have been taken into consideration when reaching decisions.
- ✓ Reflecting on and assessing local policies affecting children and young people from an equality perspective. Reviewing impact assessments and thinking about the degree to which public authorities have discharged their equality duties (PSED) will be crucial. Asking for documents such as Equality Impact Assessments (or other impact studies and supporting data) will help determine whether equality considerations were included and whether this was meaningful or merely an afterthought or a box-ticking exercise. It will also raise expectations within the organisation and hopefully help embed ways of working which support equality.

- ✓ Documenting suspected breaches and bringing them to the attention of public authorities. Building a ‘portfolio’ of examples at a service-level can lead to “developing a ‘critical mass’ of cases to inform employers and organisations about their legal duties and make adherence to existing equality law a priority for all organisations”.⁵⁴
- ✓ Assessing whether the statutory complaints procedure is accessible to and meets the distinct needs of certain groups and that it does not inadvertently discriminate against any particular group.
- ✓ Finding out what the local equality objectives are and holding those responsible to account by referencing them or requesting evidence of progress should help raise the profile of non-discrimination and advancing equality.
- ✓ Considering what other laws can strengthen the case you’re working on, e.g. can the HRA be invoked alongside or instead of the Equality Act? Can reference to non-discrimination as a general principle⁵⁵ of the UN Convention on the Rights of the Child be made? The more comprehensive your legal analysis, and creative thinking, the stronger your challenge will be.

Useful links:

[Equality Act 2010](#)

[Explanatory notes to the Act](#)

[Equality and Human Rights Commission](#)

[Citizens Advice, Discrimination](#)

[Equality Advisory and Support Service \(EASS\)](#)

Endnotes

- ¹ The Act received Royal Assent and became law on 8 April 2010.
- ² The Race Relations Act 1965 was the first legislation of its kind in the UK.
- ³ Northern Ireland still has the legacy anti-discrimination legislation in place. However, there are minor exceptions to this, where the Equality Act applies in Northern Ireland.
- ⁴ Child Poverty Action Group (no date) [Who is at risk of poverty?](#)
- ⁵ Bywaters, P. (11 Sep 2018) Country matters: inequalities in children’s social care. [Community Care](#).
- ⁶ Article 39 (2020) [Care for all children in care](#).
- ⁷ Department for Education (2019) [Permanent and fixed period exclusions in England: 2017 to 2018](#).
- ⁸ Committee on the Rights of the Child (2016) [Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland](#).
- ⁹ Her Majesty’s Prison and Probation Service (2020) [Youth custody data](#).
- ¹⁰ StopWatch (no date) [Stop and search in your neighbourhood](#).
- ¹¹ Revolving Doors Agency (no date) [Racial bias is pulling black young adults into an avoidable cycle of crisis and crime](#).
- ¹² Committee on the Rights of the Child (2016) [Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland](#).
- ¹³ Become (2017) [Perceptions of Care](#).
- ¹⁴ [The government has decided](#) that certain provisions of the Act would not come into force for the foreseeable future.
- ¹⁵ [Section 1](#), Equality Act 2010 has been in force in Scotland since 2018 - ‘the fairer Scotland’ duty.
- ¹⁶ Article 14, Human Rights Act (protection from discrimination) can only be used in conjunction with another ECHR Article; this is explained in ‘Using the Human Rights Act to challenge discrimination’ part of the guide.
- ¹⁷ [Mathieson v Secretary of State for Work and Pensions \[2015\] UKSC 47 \(8 July 2015\)](#).
- ¹⁸ [Schedule 1 of the Act](#) – Disability: supplementary provision
- ¹⁹ The exceptions are quite nuanced, including in cases of addiction to prescription drugs, so it is worth consulting caselaw and relevant statutory instruments or seeking legal advice. The key exceptions are set out in [the Equality Act 2010 \(Disability\) Regulations 2010](#).
- ²⁰ The Act does not use the term ‘trans’ and instead refers to ‘transsexual person’.
- ²¹ Enjoying protection under the Act is not contingent on obtaining a Gender Recognition Certificate.
- ²² Pregnancy and maternity is defined in Chapter 2 of the Act (Prohibited conduct: Sections 17 and 18), unlike all the other characteristics which are defined in Chapter 1. [Section 17](#) covers non-work cases and [Section 18](#) work cases (note that Section 18 has effect only in relation [to Part 5 of the Act: Work](#))
- ²³ The criteria for determining what is a ‘philosophical belief’ are that: it must be genuinely held; be a belief and not an opinion or viewpoint based on the present state of information available; be a belief that relates to a substantial aspect of human life and behaviour; attain a certain level of cogency, seriousness, cohesion and importance; and be worthy of respect in a democratic society, compatible with human dignity and not conflict with the fundamental rights of others.
- ²⁴ [Section 13\(2\)](#)
- ²⁵ [Section 15\(1\)\(b\)](#)
- ²⁶ [Section 19\(2\)\(d\)](#)
- ²⁷ For more information, visit the [Equality and Human Rights Commission](#) or [Citizens Advice](#)
- ²⁸ [Schedule 9](#): Work exceptions, which are explained in more accessible language in the [explanatory notes](#).
- ²⁹ [Mander & Anor v Royal Borough of Windsor & Maidenhead & Anor \[2019\] EWFC B64 \(06 December 2019\)](#).
- ³⁰ [G v St Gregory’s Catholic Science College \(Rev 1\) \[2011\] EWHC 1452 \(Admin\) \(17 June 2011\)](#).
- ³¹ Department for Education, Department of Health (2015) [Special educational needs and disability code of practice: 0 to 25 years. Statutory guidance for organisations which work with and support children and young people who have special educational needs or disabilities](#), p.17.
- ³² [Schedule 10](#), Equality Act 2010.
- ³³ Department for Education, Department of Health (2015) [Special educational needs and disability code of practice: 0 to 25 years. Statutory guidance for organisations which work with and support children and young people who have special educational needs or disabilities](#), p.17.

³⁴ [City of Bradford Metropolitan District Council \(18 014 759\)](#).

³⁵ Note pregnancy and maternity, and marriage and civil partnership are not included.

³⁶ [Section 27\(2\)](#)

³⁷ There are also some exceptions for adults and they are set out in the [Equality Act 2010 \(Age Exceptions\) Order 2012](#); you may find this [briefing](#) from Age UK helpful or, for more detailed information, you can consult the EHRC's [technical guidance](#).

³⁸ [Schedule 3](#), Paragraph 15 (Services and public functions: exceptions).

³⁹ [Schedule 10](#)

⁴⁰ Department for Education, Department of Health (2015) [Special educational needs and disability code of practice: 0 to 25 years, Statutory guidance for organisations which work with and support children and young people who have special educational needs or disabilities](#), p.17.

⁴¹ Explanatory notes to the Act, Section 89: Interpretation and exceptions, para 302

⁴² [Schedule 11](#).

⁴³ Article 39 covered this challenge in its [April 2020 legal digest](#).

⁴⁴ Article 39 covered this challenge in its [April 2020 legal digest](#).

⁴⁵ [Schedule 18: Public Sector Equality Duty: Exceptions](#).

⁴⁶ [The Equality Act 2010 \(Specific Duties\) Regulations 2011](#).

⁴⁷ The 'Brown principles were established by a court considering a disability discrimination claim brought by a woman (Judy Brown) affected by the closure of her local post office: [Brown, R \(on the application of\) v Secretary of State for Work and Pensions \[2008\] EWHC 3158 \(Admin\) \(18 December 2008\)](#).

⁴⁸ [The London Borough of Bromley v Persons Unknown \(Rev 3\) \[2020\] EWCA Civ 12 \(21 January 2020\)](#).

⁴⁹ Equality and Human Rights Commission (2019) [Our Powers](#).

⁵⁰ [Section 8](#), Equality Act 2006

⁵¹ Equality and Human Rights Commission (2020) [Inquiries, investigations and wider powers](#).

⁵² Department for Education and Skills (2006) [Getting the Best from Complaints Social Care Complaints and Representations for Children, Young People and Others](#), p.25, paragraph 5.5.1.

⁵³ [L & Others, R \(on the application of\) v Manchester City Council \[2001\] EWHC 707 \(Admin\) \(28 September 2001\)](#).

⁵⁴ House of Commons Women and Equalities Committee (2019) [Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission](#). 30 July 2019, p.3.

⁵⁵ There are four general principles of the UNCRC: non-discrimination (Article 2); best interests (Article 3); life, survival and development (Article 6) and participation (Article 12). General principles are of relevance to all rights guaranteed in the UNCRC and therefore they guide the interpretation and implementation of all rights set out in the UNCRC.