

Access to Elected
Office for Disabled
People Strategy
Compliance with the
Equality Act 2010
Guidance for
political parties

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Introduction

Ensuring that everyone has a voice in our democratic institutions makes our democracy stronger. Elected bodies that are fully representative of the people they serve are more able to make informed decisions. There is approximately one in seven working age adults (and almost one in two over state pension age) with an impairment or disability in Great Britain (namely that they have a physical or mental impairment, which has a substantial and long term adverse effect on their ability to perform day-to-day activities).

That is why Government included extra support for disabled people who want to become MPs, councillors or other elected officials as a commitment in the Coalition Agreement.

This commitment followed the findings from the cross-party Speaker's Conference which reported in January 2010 on how to increase diversity in Parliamentary representation. That report emphasised the need to address the barriers facing under-represented groups, including disabled people.

In 2011, Government consulted publicly on supporting disabled people seeking elected political office. As a result, Government committed to deliver the following:

1. To work closely with political parties, the Local Government Association (LGA) and disability organisations to raise awareness of the importance of diverse representation including from disabled people.
2. Provide training and development opportunities aimed at supporting disabled people through the route to political participation
3. Establish an Access to Elected Office Fund to support disability related costs
4. Work with political parties to analyse their existing disability access policies and promote good practice
5. Promote and explain legal obligations that apply to political parties e.g. produce a short guide to support political parties in fulfilling their duties in compliance with the Equality Act 2010.

This guidance follows from the fifth commitment above. Its purpose is to inform political parties of their obligations under the Equality Act 2010 (the 'Act'), especially in relation to making reasonable adjustments. This will help political parties to be more inclusive and involve disabled people more in public life.

¹ Source: Office for Disability Issues: Family Resources Survey 2009/10; Working age refers to men aged 16-64 and women aged 16-59; State Pension Age refers to men aged 65 and over and women aged 60 and over.

The Equality Act 2010

The **Act** replaced previous discrimination legislation with a single piece of legislation with the purpose of making the law simpler and to remove inconsistencies. This makes the law easier for people to understand and comply with. The Act also strengthened protection in some situations.

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The Act prohibits unfair treatment in the workplace, when providing goods, facilities and services, when exercising public functions, in the disposal and management of premises, in education, and by associations (such as political parties and including private clubs). Political parties have an obligation to comply with certain duties imposed by the Act. It is essential they have a good understanding of their responsibilities so they can fulfil these legal obligations, including in respect of disabled candidates who are seeking elected office.

The Act applies to political parties when:

- a) the party meets the definition of an 'association' as described in the Act (that is a group of 25 or more members with a genuine selection process) and/or
- b) an organisation provides goods, facilities or services to the public or a section of the public.

Who is this guidance for?

We hope this guide will be helpful to all political parties and their members. It is intended to encourage political parties and their members to consult with and involve disabled people. It will also be of interest to disabled people and disability organisations as well as the general public.

The guide is particularly intended for members of political parties (or other political organisations) who meet the criteria set out in (a) and (b) above. These organisations have a responsibility to provide reasonable adjustments to enable disabled members to integrate fully into the organisation and not be disadvantaged because of their disability. A full explanation of what this means in practice is set out below.

Legal obligations

Requirements for associations which are registered political parties

The Act protects disabled people from several forms of unlawful conduct, including:

Direct disability discrimination

This occurs when a disabled person is treated less favourably than someone who is not disabled. It can also occur when a person who is not disabled is treated less favourably because they are wrongly perceived to be disabled. In addition, it can occur when a person who is not disabled is treated less favourably because they associate with someone who is disabled.

Example: An association (as identified in (a) and (b) above) receives an application for membership from a disabled person with learning difficulties. They refuse the application because of the applicant's learning difficulties. This would be unlawful discrimination.

Indirect disability discrimination

This occurs where a policy or practice is applied to everyone but it puts disabled people at a particular disadvantage; if the application of the policy or practice cannot be objectively justified, then this could be unlawful indirect disability discrimination.

Objective justification is where the policy or practice is shown to meet a legitimate objective in a proportionate way.

Example: A political party imposes a condition on all its members which is difficult for a disabled person to comply with because of their disability. Such a condition might be to require all members to conduct door-to-door canvassing. However, they have imposed the condition without giving consideration or forethought to any reasonable adjustments a disabled candidate with mobility issues may need to enable them to effectively take part in such a campaign.

Discrimination arising from disability

This occurs when a person is treated unfavourably because of something connected with their disability, and the treatment cannot be objectively justified.

Example: An application has been received by the party from a disabled person with a muscle-related impairment. The applicant has been asked to attend an interview at the party headquarters in London on a Monday morning at 10.00 am on a specified date. They have stipulated in their invitation to interview that any applicant who fails to attend as requested will have their application disregarded. What the party may not know is that this applicant has a regular hospital appointment every Monday; and furthermore, because of mobility issues caused by their disability, they need more time to travel to the party headquarters' location and therefore cannot get there for 10.00 am.

However, it should be noted that, for this type of discrimination to occur, the association must know, or reasonably be expected to know, that the person is disabled.

Failure to make reasonable adjustments

The Act states that an association or organisation responsible for delivering goods, facilities or services to the public is under a duty to comply with the following requirements where a disabled person is placed at a substantial disadvantage in comparison with non-disabled people. It is an anticipatory duty which means that associations must think in advance of the needs of disabled members and guests (including prospective members and guests) and make appropriate reasonable adjustments. The question of whether an adjustment is reasonable can take into account all the circumstances.

A reasonable adjustment can be:

1. to adjust a provision, criterion or practice;
2. to adjust or provide a means of avoiding a physical feature;
3. to provide an auxiliary aid or service.

To adjust a provision, criterion or practice - an association is under a duty to make reasonable adjustments where a policy or practice of the association puts a disabled person at a substantial disadvantage compared to non-disabled people. The duty requires the association to take reasonable steps to avoid that disadvantage.

Example: An association has a policy that it sends information to prospective candidates in writing. Complying with a request to transcribe this into large print would constitute a reasonable adjustment for a disabled person with a vision impairment.

To adjust or provide a means of avoiding a physical feature - an association is also under a duty to make reasonable adjustments where a physical feature puts a disabled person at a substantial disadvantage compared to non-disabled people. The duty requires the association to avoid the

disadvantage, or adopt a reasonable alternative method of affording access to the benefit, facility or service, or of admitting people to membership. This may require removing the feature, altering it, or providing a reasonable means of avoiding it.

Example: If a local branch of a political party decides to change the venue for its meetings from a second floor room in a building without a lift to a ground floor room, this would be a reasonable adjustment for disabled people who are wheelchair users.

However, if it is a common practice to hold such meetings in a member's or associate member's home, then reasonable adjustments do not have to be made to physical features to make the home accessible for a disabled member to whom the physical features of the meeting place present a barrier to them attending. In these circumstances, the duty to make a reasonable adjustment may require the meeting(s) to be held at an alternative accessible venue.

To provide an auxiliary aid or service - an association is also under a duty to make reasonable adjustments to provide an auxiliary aid where, but for the provision of an auxiliary aid, a disabled person would be put at a substantial disadvantage compared to non-disabled people.

Example: An association is holding a members' conference and, as part of their forward planning, they are able to provide upon request information in the delegate packs in a range of accessible formats such as Easy Read, Braille, large print or audio tape. This is done as an anticipatory measure to accommodate those members with accessibility issues. They also place the same information on their website for members who cannot attend the conference and supply hard copies of the documents in the various formats upon request from disabled members.

Paying for reasonable adjustments

An association is not entitled to require a disabled person to whom it has a duty to make reasonable adjustments to pay the association's costs of making those adjustments.

With this in mind, we would encourage party members organising events and meetings in private houses and other informal meeting venues to consider the needs of any disabled members and what reasonable adjustments, including if necessary the use of alternative venues, can be made at the earliest opportunity.

To ensure effective equality and accessibility for disabled people, a most productive method is to involve disabled people. By including them at the earliest opportunity you reduce the risk of liability for your organisation (for breach of discrimination law) and the possibility of having to meet higher costs in relation to making reasonable adjustments. It is fair to say that reasonable adjustment costs are invariably more expensive if 'bolted on' to a service rather than built in to your process and, of course, they should be built in because you should be considering such issues in advance.

Associations

The Act says that an association must not discriminate against a disabled member:

- by the way it provides access, or does not provide, access for the disabled member to a benefit, facility or service;
- by depriving the disabled member of membership;
- by varying the disabled member's terms of membership;
- by subjecting the disabled person to any other detriment.

For your information, the **Equality Act 2010 Code of Practice for Services, Public Functions and Associations** refers to what constitutes a 'benefit, facility or service' (paragraph 12.27) and describes the wide range of material advantages that can be enjoyed by members of an association. It goes on to describe what 'terms of membership' (paragraph 12.28) can include, such as fees and charges, voting rights, right to stand for office or to represent the association externally, conditions for use of facilities and participation in events.

As the duty to make reasonable adjustments is anticipatory, this means that associations are required to consider, and take action, in relation to barriers that may impede disabled people who are seeking, for example, to become a member of a party from enjoying membership benefits. This provides a way of encouraging and influencing good practice where political parties should take reasonable steps to overcome the obstacles that deter/prevent disabled people's involvement before individual cases arise.

Example: A local branch of a political party planning a recruitment campaign should consider producing information and application forms in accessible formats and arranging meetings or events in accessible venues as part of its forward planning process. The larger parties already take this approach in relation to the provision of general election manifestos and making them available in alternative formats.

Membership of political parties

Becoming a member:

If it is a requirement that a person must be a member of a political party before they may be considered for selection as a political candidate, then the ability to be put forward or selected as a candidate is a material advantage of membership.

However, in accordance with the Act, anything that leads to a disabled candidate being denied or having restricted access may be unlawful because it would deny them that advantage (section 20, reasonable adjustments). Equally, exclusion from being considered for selection as a candidate because of disability (section 13, direct disability discrimination), or because of something arising from the disability (section 15, discrimination arising from disability) could potentially be unlawful.

Membership benefits:

Similarly, a political party and other associations within the remit of the Act risk committing unlawful discrimination if they:

- have terms of membership that preclude disabled people from advancing in the association, or that make any such advancement more difficult than for a non-disabled person;
- fail to make reasonable adjustments required to avoid the disabled person being put at a substantial disadvantage compared to non-disabled people in seeking advancement in the association.

It is crucial, therefore, that an association ensures that it is not discriminating in the ways described above against disabled members and that reasonable adjustments are made as required.

Can I use positive action?

www.legislation.gov.uk/ukpga/2010/15/section/104

www.legislation.gov.uk/ukpga/2010/15/section/158

www.legislation.gov.uk/ukpga/2010/15/section/159

It is important to understand that equality for disabled people does not mean that you have to treat disabled people the same as non-disabled people. In order to achieve equality between disabled and non-disabled people, it is often necessary to treat disabled people differently in order to achieve an equal outcome. In some instances this will mean treating the disabled person more favourably than the non-disabled person.

'Positive action' is voluntary and a number of criteria have to be met before political parties can use it (please refer to sections 104, 158 and 159 of the Act).

Under provisions within the Act (section 104), a party can make arrangements in relation to the selection of election candidates to address under-represented people with relevant protected characteristics. However, the party cannot (with the exception of single-sex shortlists (section 104(7))) reserve all the places for the relevant protected characteristic group. **The Equality Act 2010 Code of Practice for Services, Public Functions and Associations** covers these issues.

It is not, therefore, unlawful to treat a disabled person more favourably than a non-disabled person. However, if a political party already proposes to treat disabled people more favourably, they will not need to consider using positive action.

The positive action provisions in the Act may be more relevant in the event that a political party wishes to treat people with a particular disability more favourably than those with another form of disability. For example, to provide mentoring and training for people with a learning disability but not for people with a hearing impairment; or to automatically include people with a learning disability on a shortlist but not those with a hearing impairment.

Example: A political party regularly holds regional mentoring and training sessions for disabled people with learning disabilities. The party also choose to reserve a specific number of seats on a by-election shortlist for disabled people.

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