



Department
for Culture
Media & Sport

ASKING AND RESPONDING TO QUESTIONS OF DISCRIMINATION IN THE PROVISION OF GOODS AND SERVICES AND PUBLIC FUNCTIONS

January 2014

Contents

Introduction	4
Terms used	4
Discrimination under the Equality Act 2010	4
Resolving disputes	5
Asking questions of discrimination in the provision of goods and services – six guidance steps for questioners	6
Responding to questions of discrimination in the provision of goods and services – guidance steps for responders	8
Further help	12
Annex 1 – A questioner’s template	13

For advice on asking and replying to questions covering discrimination in the workplace, refer to the ACAS website: www.acas.org.uk

If you are treated badly as a consequence of asking the questions referred to in this guide you may be protected under the victimisation provisions of the Equality Act 2010.

Introduction

1 Issues of discrimination can be complex. A written question and answer process can be particularly helpful in establishing what has happened and can help in trying to resolve concerns, avoiding claims and disputes. This good practice guidance explains how people that receive or seek to receive goods or services, and who think they may have been discriminated against under the Equality Act 2010, can ask questions about what may have happened to them and how people or organisations that receive such questions can respond appropriately.

2 Sometimes a simple question and answer will clear up a misunderstanding; sometimes an acknowledgement that things may have gone wrong and an offer to put matters right will be all that is necessary to sort out a problem.

Terms Used

3 A **Questioner** is the person who thinks they may have a discrimination, harassment or victimisation complaint, or a complaint about other conduct prohibited by the Equality Act 2010.

A **Responder** is the organisation or person who has been asked to answer the questions in the area of the provision of goods and services and public functions. This could be a person or organisation that is:

- Providing services, whether for profit or not;
- Exercising a public function;
- Selling or letting or managing premises;
- An association, which includes a private club or political party;
- An education provider, including schools, further education, higher education and general qualifications bodies.

Discrimination under the Equality Act 2010

4 The Equality Act 2010 makes it unlawful to discriminate against someone because of one or more protected characteristics. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Public bodies (for example local authorities) should also remember that the public sector equality duty also requires them, in the exercise of their functions, to “have due regard to the need to” eliminate conduct prohibited by the Equality Act 2010, such as discrimination, as well as the need to advance equality of opportunity and foster good relations between persons who share a “relevant protected characteristic” and persons who do not.

5 Discriminatory conduct under the Equality Act 2010 covers:

- Direct discrimination: when someone is treated less favourably than another person because of a protected characteristic they have or are thought to have (perceptive discrimination) or because they associate with someone who has that characteristic (associative discrimination).
 Note – the protected characteristics of marriage and civil partnership and pregnancy and maternity are not covered by perceptive discrimination or associative discrimination.
- Indirect discrimination: a rule, policy or practice which is applied more widely but has a disproportionately adverse effect on particular groups of people and furthermore cannot be objectively justified.
- Victimization: treating someone badly because they have made, or people think they have made, a complaint about discrimination or have given evidence in a discrimination case.
- Harassment: unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.
- Discrimination arising from disability.
- Failure to make reasonable adjustments in relation to disability.

6 The Equality Act 2010 applies to the workplace, the provision of services, exercise of public functions, managing or letting premises, in education, and to associations including private clubs. ACAS has produced guidance on asking and responding to questions on discrimination in the workplace, including equal pay. This guidance can be found on their website.

Resolving Disputes

7 Before taking a claim to a civil court, the customer or service user may first wish to consider:

(a) The internal complaints resolution mechanisms made available by the relevant individual / organisation.

Mrs Smith's daughter is joining a nursery run by the local council. She asks the nursery to prepare kosher meals for her daughter in line with the dietary requirements of their religion. The nursery catering staff say they would be serving a set menu for all children and, if she disagrees with the menu, she will have to provide her daughter with a packed lunch. Mrs Smith is unhappy with this and lodges a complaint with the local council in accordance with their internal complaints procedure. A representative from the council meets with Mrs Smith and the head teacher of the nursery. The head teacher explains that a kosher menu has already been procured, but that this had not been communicated effectively to the catering staff; he has now done this and the staff will be preparing a menu in line with her daughter's dietary requirements. Mrs Smith accepts this outcome and the issue is resolved.

(b) Mediation can also be a useful technique in resolving equality and discrimination based disputes before they become civil cases. For civil disputes, the [National Mediation Helpline](#) on 0845 60 30 809 or the [Centre for Effective Dispute Resolution \(CEDR\)](#) – www.cedr.com can help resolve disputes out of court.

The Equality Advisory and Support Service (EASS) provide bespoke advice and in-depth support and informal resolution to individuals with discrimination problems. If someone requires formal resolution, in terms of making a case, or formal alternative dispute resolution e.g. mediation and conciliation, then EASS can refer them to an appropriate organisation (usually a local provider). EASS's contact details can be found in the further help section.

8 Whilst these steps can help resolve a dispute, the questioner must keep in mind that there is generally a time limit of 6 months from the day that gave rise to the complaint to making a claim at a county court or sheriff court in Scotland.

Tip: The questioner or responder may also wish to seek independent legal advice or advice from a local advice centre (see Further Help).

Asking questions of discrimination in the provision of services – six step guidance for questioners

9 It is always helpful when resolving a dispute to establish the facts about the conduct which may have led to a customer or service user thinking that it may be discriminatory. The following six steps set out how to prepare for and seek information from the responder. The template at Annex 1 can help organise or frame questions.

Step 1 – Questioner's and responder's details

The questioner should set out their name and address and clarify the parties they think may have acted unlawfully against them.

Step 2 – Protected characteristic under the Equality Act 2010

The questioner needs to identify which protected characteristic(s) may have been the subject of the unfairness they've experienced. There are nine protected characteristics (see paragraph 4 of this guide, above, for a list).

Step 3 – Description of treatment

The questioner should set out a brief factual description of the complaint including the treatment or lack of treatment, or the failure to make a reasonable adjustment in the case of a disabled person, and the circumstances leading up to that treatment. The description should aim to give key factual details, such as the date, time, place and number of instances of the treatment that are central to the complaint.

When describing the events, the questioner should say whether other people were involved, name them and suggest reasons why these individuals acted the way they did.

On the 9th July 2014 I was shopping with a friend and we decided to lunch at your restaurant. I was greeted by a very helpful waitress at the door who was able to find us a table with sufficient space to accommodate my pram. My new-born baby needed feeding so, as we were in a discreet corner of the restaurant, I began breastfeeding her. My friend asked a waiter if we could order but, upon seeing me, he said he would need to speak to his manager. The manager appeared and said he would not serve me as I was breast feeding in public.

Do you agree with my description of events? If you do not, please would you set out your reasons?

Tip: A questioner should always ask if the responder agrees with the statement at Step 3 and if not, why not.

Step 4 – Type of discrimination you experienced

The questioner needs to identify the type of discrimination they believe has occurred. These are listed at paragraph 5. The questioner can get help with identifying the form of discrimination from Citizen’s Advice Bureau as well as the Equality Advisory Support Service helpline at 0808 800 0082. It may also be possible, subject to eligibility, to obtain this advice in England and Wales through civil legal aid or through advice and assistance in Scotland.

Step 5 – Why you think your treatment was discriminatory

This step allows the questioner to set out why they think the treatment or disadvantage might be unlawful. Identifying some of the areas of disagreement can help the responder address the concerns more accurately. They should set out in what context or capacity they experienced the unfavourable treatment being enquired about.

I think the refusal of the restaurant manager to serve me was unlawful because it is unlawful to discriminate by not providing a service to a woman because she is breast feeding.

Step 6 – Additional questions about treatment

The questioner can ask any appropriate questions of the responder that they consider might be important to the events they feel have affected them. Many organisations have policies to ensure fair treatment for customers and service users, and questioners might want assurances they were treated consistently with them. A questioner can ask for statistics to show how people with their protected characteristic are treated by the organisation

Has the restaurant received other complaints in the past relating to breast feeding mothers and, if so, what were the outcomes?

- 10 Always aim to keep questions as short and as relevant as possible.
- 11 On completion of step six, the questions should be sent to the responder. This can be done in any format (letter, e-mail or questionnaire).
- The documents can be delivered in person or sent by post, fax or e-mail. If sending by post, it is advised to use a recorded delivery service as evidence can be produced to show the questions were delivered.
 - If using email or fax, request a “read” receipt on emails or check the fax delivery status.

The questioner can:

- Make clear the documents will require action by the responder.
- Confirm the documents are received by the responder.
- Ask the responder to reply by a set date.
- Tell the responder where to send their answers.
- Keep a copy of the documents in a safe place.

Responding to questions of discrimination– three step guidance for responders

12 Receiving questions doesn't mean a responder will have to appear before a county court (or a sheriff court in Scotland). Although these questions need to be treated seriously and promptly, the responder should consider what implications there may be for them and their organisation by answering the questions or not and consider how to do so most appropriately. If a responder chooses not to answer, a claim may be lodged at the county court which may have been avoided by discussion between them and the questioner.

13 The responder should talk to the questioner or their representative about ways to resolve the dispute. Many disputes can be resolved before civil proceedings are commenced so the responder should seek to deal with questions as quickly as reasonably practicable.

As the owner of a letting agency, David receives questions from a customer, John, concerning discrimination related to his gender. John and his friend viewed a flat, which they hoped would be available for their final year of university. Unfortunately they were turned down and John later discovered that the flat went to two women. David suggests a meeting as a way of possibly resolving this dispute. After investigation, David discovers that John was only turned down because John had failed to provide the appropriate references and credit checks in time. David relays this to John, explaining he may have acquired the house had he provided the credit checks in time, which John accepts.

Tip: In any event do not ignore these questions.

The following steps set out the main issues for a responder to consider when deciding on how to answer the questions.

Step 1 – Agree/disagree with questioner’s statement

The responder should consider if they agree, agree in part or disagree with the description of the treatment the questioner alleges they received. The responder should investigate then set out their version of the events. If a responder doesn’t wish to answer all the questions raised, they should note paragraph 14 below.

Step 2 – Consider whether the treatment was justified

The questioner is suggesting the behaviour they experienced was unlawful in that it amounted to discrimination. Although under the Equality Act 2010 direct discrimination is not justifiable unless it is because of age, it is possible to justify indirect discrimination, if a responder considers their actions were justified and proportionate. Some indicators of what could amount to objective justification are set out in paragraph 16 below.

Step 3 – Responding to other questions

If a responder thinks some questions are not relevant or unclear, they should clarify their purpose with the questioner to help them to reply appropriately or explain why they will not respond to specific questions.

14 A responder is under no legal obligation to answer the questions, but a county/sheriff court may look at how and if a responder answered the questions as a contributory factor in making their overall decision. This is therefore a risk a responder needs to weigh up when considering whether to reply and what to say.

Tip: It is good practice for a responder to share as much information in the answers as they feel able to do since this can help a speedier resolution of the dispute, or prevent escalation into a formal complaint because the questioner has become frustrated.

15 Where the relevant information is considered to be commercially sensitive or confidential, information can be presented in a non-specific way. A responder should give reasons where they are unable or unwilling to provide answers to a question because of these issues. Personal and sensitive personal data is protected by the Data Protection Act 1998. Confidential information is protected by the common law duty of confidence. Where information is confidential, it can only be disclosed with the consent of the individual in question, unless there is a legal obligation to do so or there is a strong public interest in favour of disclosure.

For advice on specific issues relating to data protection legislation and practical guidance, responders may wish to refer to the Information Commissioner's Office by phoning 0303 123 1113 or looking on its website: www.ico.gov.uk.

16 The Equality Act 2010 allows for objective justification of indirect discrimination and also sometimes where there is direct age discrimination. Indirect discrimination can occur when you have a condition, rule, policy or even a practice that applies more widely but particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if a responder can show they acted reasonably in managing the business, i.e. that it is 'a proportionate means of achieving a legitimate aim'. A *legitimate aim* might be any lawful decision made in running a business or organisation. However, if there is a discriminatory effect, the sole aim of reducing costs is unlikely to be lawful.

Tip: Being proportionate means a responder has really looked at the options including showing that it was not possible to take 'less or non-discriminatory' alternatives to any decision made.

A record shop issues an email to its customers describing short term special offers. This can put blind people at a disadvantage. The business is a small shop and discount stocks are limited. A telephony service, aimed at the blind, was suggested; however as only one member of staff is available to make the outbound calls it is possible that the shop may be out of stock by the time the calls were completed. The lack of an accessible alternative to the promotional email may be considered as indirectly discriminating against certain customers because of their disability and a failure to apply the duty to make reasonable adjustments; however it may be justified by the smallness of the business and the limited stock.

Tip: If a responder considers their actions may be justified and proportionate it would be sensible to discuss this with a colleague and/or a legal adviser first to try and avoid assumptions or making a mistake.

19 When returning the answers to the questioner, the responder can:

- Return their answers by hand, e-mail or by post.
- Use a recorded delivery service, so that evidence can be produced to show the answers were delivered.
- Request a "read" receipt on emails or check the fax delivery status.
- Send the answers form to the address indicated by the questioner
- Respond in a reasonable time. If a responder cannot meet a deadline set by the questioner they should let them know and agree an alternative date.

The questions sent and the responder's reply should be kept in a safe place.

20 A responder must not treat the questioner badly for asking these questions, for example by refusing to provide them with a service. To do so could give rise to a claim of victimisation under the Equality Act 2010.

Further Help

The Equality Advisory and Support Service (EASS) provide bespoke advice and in-depth support to individuals with discrimination problems and can be contacted on the following number: 0808 800 0082 (or textphone 0808 800 0084).

The Equality and Human Rights Commission have advice on their website regarding all forms of discrimination as well as a useful glossary of terms which can be found at:

<http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/glossary-of-terms/>

If you require an alternative format or any other assistance, please contact enquiries@culture.qsi.gov.uk.

Annex 1

Questioner's template: Organising your questions

The template below is designed to help the questioner draft and develop questions to the responder so they are better able to answer the matters identified.

Step 1- Questioners & responders details

Step 2 – Protected Characteristics affected

Step 3 – Description of what happened to you

Step 4 –Type of discrimination you experienced

Step 5 – Why do you think what happened was unlawful

Step 6 – Additional questions you would like to ask



Department
for Culture
Media & Sport

4th Floor, 100 Parliament Street
London SW1A 2BQ
www.gov.uk/dcms