

Equality Act 2010 Guidance



Document Control Sheet

Document title	Equality Act 2010 Guidance
Summary of purpose	Maldon District Council is committed to providing equal opportunities in employment and avoiding unlawful discrimination. This guidance document provides additional information on the protected characteristics and types of discrimination, as covered by the Equality Act 2010.
Prepared by	HR
Status	Final
Version number	1
Approved by	
Approval date	
Date of implementation	
Review frequency	
Next review date	As required by legislative changes
Circulation	All staff
Published on the Council's website	

Validity Statement

This document is due for review as and when relevant legislation changes. Users of the policy should ensure that they are consulting the currently valid version of the document.

If you would like this information in large print, Braille or another language, please contact HR.



MALDON DISTRICT
COUNCIL

Contents

	Page
Policy Statement	4
Section 1: Overview	4
1. Scope	4
2. Links to Other Policies / Procedures	4
Section 2: Guidance	5
1. Age	5
2. Disability	6
3. Gender Re-assignment	8
4. Marriage and Civil Partnership	8
5. Pregnancy and Maternity	9
6. Race	10
7. Religion or Belief	11
8. Sex	11
9. Sexual Orientation	11
10. Caste	12
Types of Discrimination	12
1.1 Direct Discrimination	12
1.2 Indirect Discrimination	12
1.3 Harassment	13
1.4 Bullying	14
1.5 Associative Discrimination	14
1.6 Perceptive Discrimination	14
1.7 Victimisation	15

Section 1 - Overview

This guidance document provides additional information on the protected characteristics and types of discrimination, as covered by the Equality Act 2010.

This guidance covers how we treat everyone; colleagues, customers and other stakeholders. The guidance should also be used when policies are being planned and services are commissioned. Further information can also be found in the Council's Corporate Equality Policy.

1. Scope

- 1.1 This document has been produced as a guidance document to enable those concerned to better understand the Equality Act.
- 1.2 Any issues relating to discrimination should be raised immediately with the line manager and / or Human Resources in conjunction with the Grievance Policy and Procedure.

2. Links to other Policies / Procedures:

MDC Equality and Diversity in Employment Policy
Disability Confident Scheme
Guide for Managers – the Duty to Make Reasonable Adjustments
MDC Corporate Equality Policy
Grievance Policy and Procedure (for further information on bullying and harassment)

Section 2 - Guidance

Protected Characteristics

1. Age

1.1 The Act protects people of all ages. However, different treatment because of age is not unlawful direct or indirect discrimination if it can be justified, i.e. if the employer can demonstrate that it is a proportionate means of meeting a legitimate aim. Age is the only protected characteristic that allows employers to justify direct discrimination.

1.2 An age group includes people of the same age and people of a particular range of ages. Where people fall in the same age group they share the protected characteristic of age. An age group would include “over fifties” or twenty-one year olds. A person aged twenty-one does not share the same characteristic of age with “people in their forties”. However, a person aged twenty-one and people in their forties can share the characteristic of being in the “under fifty” age range.

1.3 Where it is necessary to compare the situation of a person belonging to a particular age group with others, the Act does not specify the age group with which comparison should be made. It could be everyone outside the person's age group, but in many cases the choice of comparator age group will be more specific; this will often be led by the context and circumstances.

Example

A female employee aged 25 could be viewed as sharing the protected characteristic of age with a number of different age groups. These might include '25 year olds', 'the under 30s', 'the over 20s', and 'younger workers'.

The employee in this example might compare herself to 'over 25s', or 'over 35s', or 'older workers'. She could also compare herself to 'the under 25s' or '18 year olds'.

2. Disability

2.1 A person has a disability if they have a physical or mental impairment and the impairment has a **substantial** and **long-term** adverse effect on their ability to perform **normal day-to-day activities**.

2.2 This section replaces similar provisions in the Disability Discrimination Act (DDA) 1995 and provisions in secondary legislation made under the DDA.

2.3 For the purposes of the Equality Act, these words have the following meanings:

- **'substantial'** means more than minor or trivial
- **'long-term'** means that the effect of the impairment has lasted or is likely to last for at least twelve months (there are special rules covering recurring or fluctuating conditions)
- **'normal day-to-day activities'** includes everyday things like eating, washing, walking and going shopping, using a telephone, reading a book or using public transport.

2.4 Where people have the same disability, they share the protected characteristic of disability.

2.5 The Act puts a duty on employers to make reasonable adjustments for their employees to help them overcome disadvantage resulting from impairment, for example, by providing assistive technologies to help visually impaired staff use computers effectively.

2.6 The Act includes a new protection from discrimination arising from disability. This states that it is discriminatory to treat a disabled person unfavourably because of something connected with their disability (e.g. a tendency to make spelling mistakes arising from dyslexia). This type of discrimination is unlawful where the employer or other person acting for the employer knows, or could reasonably be expected to know, that the person has a disability. This type of discrimination is only justifiable if an employer can show that it is a proportionate means of achieving a legitimate aim.

2.7 Additionally, indirect discrimination now covers disabled people. This means that a job applicant or employee could claim that a particular rule or requirement you have in place disadvantages people with the same disability. Unless the employer can justify this, it would be unlawful.

2.8 The Act also includes a new provision which makes it unlawful, except in certain circumstances, for employers to ask about a candidate's health before offering them work.

Progressive conditions considered to be a disability

2.9 There are additional provisions relating to people with progressive conditions. People with HIV, cancer or multiple sclerosis are protected by the Act from the point of diagnosis. People with some visual impairments are automatically deemed to be disabled. For further information on visual impairments see the RNIB website (<http://www.rnib.org.uk>).

Reasonable Adjustments

2.10 The Act requires employers to make reasonable adjustments for their employees where a physical feature or a provision, criterion or practice puts a disabled person at a substantial disadvantage compared with someone who does not have that protected characteristic.

Example 1

Providing assistive technologies to help visually impaired employees use computers effectively.

Example 2

Provide additional time for job candidates with dyslexia to complete written tasks.

Example 3

Consider the physical features of where a meeting is due to take place i.e. stairs, ramps, access etc. to ensure that disabled people are not put at a disadvantage.

Failure to Make Reasonable Adjustments

2.11 This is where a physical feature or a provision, criterion or practice puts a disabled person at a substantial disadvantage compared with someone who does not have that protected characteristic and the employer has failed to make reasonable adjustments to enable the disabled person to overcome the disadvantage.

2.12 Employees should not discriminate against or harass a member of the public in the provision of services or goods. It is unlawful to fail to make reasonable adjustments to overcome barriers to using services caused by disability. The duty to make reasonable adjustments includes the removal, adaptation or alteration of physical features, if the physical features make it impossible or unreasonably difficult for disabled people to make use of services. In addition, service providers have an obligation to think ahead and address any barriers that may impede disabled people from accessing a service.

2.13 Please see Guide for Managers – The Duty to Make Reasonable Adjustments.

Disability Confident

2.14 Disability Confident is a scheme that is designed to help employers recruit and retain disabled people and people with health conditions for their skills and talent.

2.15 The Department for Work and Pensions Disability Confident scheme replaces the previous 'Two Ticks Positive about Disabled People' scheme. The scheme aims to help employers make the most of the opportunities provided by employing disabled people.

There are 3 levels to the Disability Confident Scheme:

- Level 1 – Committed
- Level 2 – Employer
- Level 3 – Leader

2.16 Employers who sign up to the Disability Confident scheme agree to take action on the following commitments:

- Ensure the recruitment process is inclusive and accessible
- Communicate and promote vacancies
- Offer an interview to disabled people if they meet the minimum criteria for the post
- Anticipate and provide reasonable adjustments as required when disabled employees are applying for and doing their jobs
- Support any existing employee who acquires a disability or long term health condition, enabling them to stay in work

2.17 The Council has committed to the Disability Confident Scheme and has also been accredited as a Disability Confident Committed employer (i.e. level 1 of the scheme).

2.18 As a Disability Confident employer, we recognise the rights of disabled staff to be considered fully and fairly in all aspects of employment.

2.19 Further information about the Disability Confident scheme can be found on the GOV.UK website.

3. Gender Reassignment

3.1 This is defined for the purpose of the Act as where a person has proposed, started or completed a process to change his or her sex. A transsexual person has the protected characteristic of gender reassignment and it is unlawful to discriminate against such a person in work and in the provision of goods, facilities, services and public functions.

3.2 A woman making the transition to being a man and a man making the transition to being a woman both share the characteristic of gender reassignment, as does a person who has only just started out on the process of changing his or her sex and a person who has completed the process.

3.4 It is discriminatory to treat transsexual people less favourably for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment than they would be treated if they were absent because they were ill or injured.

Example 1

A transsexual employee takes time off to attend a Gender Identity Clinic as part of the gender reassignment process. His employer cannot treat him less favourably than he would treat him for absence due to illness or injury, for example by paying him less than he would have received if he was off sick.

Example 2

A transsexual employee tells her boss that she intends to undergo gender reassignment and asks if she can take an afternoon off as annual leave to attend counselling. The request is refused without any reasons given even though there are enough work colleagues in the team available that day to cover her absence. This could amount to gender reassignment discrimination.

4. Marriage And Civil Partnership

4.1 The Act protects employees who are married or in a civil partnership against discrimination. Single people are not protected.

4.2 A heterosexual man and a heterosexual woman who are married to each other and a man and another man who are married to each other/civil partners and a woman and another woman who are married to each other/civil partners all share the protected characteristic of marriage and civil partnership.

- People who are not married or civil partners do not have this protected characteristic.
- A person who is engaged to be married is not married and therefore does not have this protected characteristic.
- A divorcee or a person whose civil partnership has been dissolved is not married or in a civil partnership and therefore does not have this protected characteristic.

4.3 It is unlawful to:

- Dismiss a worker after he or she gets married or enters into a civil partnership.
- To not offer a job to an applicant who has all the relevant experience and skills because she has just got married and the employer thinks she will be focused on starting a family, not her career.
- As a line manager and colleague, ignore a worker and leave her out of work-related social activities resulting in an official complaint that her supervisor is discriminating against her because she is married.

Example

An example of direct discrimination is where a married worker is not promoted, instead the job is offered to a single person because the new role will require socialising and networking which the employer believes a single person would have the time to do.

5. Pregnancy And Maternity

5.1 A woman is protected against discrimination on the grounds of pregnancy and maternity in her employment during the period of her pregnancy and any statutory maternity leave to which she is entitled. This is now separate from protection on grounds of sex, which is not available to a woman during pregnancy and maternity.

5.2 It is unlawful to take into account an employee's period of absence due to pregnancy related illness when taking a decision about her employment.

Example

Linda is pregnant and works at a call centre. The manager knows Linda is pregnant but still disciplines her for taking too many toilet breaks as the manager would for any other member of staff. This is discrimination because of pregnancy and maternity as this characteristic doesn't require the normal comparison of treatment with other employees.

6.1 The Act says you must not be discriminated against because of your race. This section replaces similar provisions in the Race Relations Act 1976.

6.2 For the purposes of the Act 'race' is defined as:

- **Colour:** for example includes being black or white
- **Nationality** (including citizenship) for example includes being a British, Australian or Swiss citizen
- **Ethnic or national origins:** for example includes being from a Roma background or of Chinese heritage.

6.3 A racial group could be 'black Britons' which would encompass those people who are both black and who are British citizens.

Race also covers ethnic and racial groups. This means a group of people who all share the same protected characteristic of ethnicity or race.

6.4 A racial group can be made up of two or more distinct racial groups, for example black Britons, British Asians, British Sikhs, British Jews, Romany Gypsies and Irish Travellers.

Example

An example of indirect discrimination is if a hairdresser refuses to employ stylists that cover their own hair. This would put any Muslim Women or Sikh men who cover their hair at a disadvantage when applying for a position as a stylist. Or, John is not given a position because he is British but born to Jamaican partners, i.e. because of their Jamaican national origins.

7. Religion or Belief

7.1 Religion means any religion and a reference to religion also includes a reference to a lack of religion.

- **A religion** must have a clear structure and belief system. Denominations or sects within a religion can be considered to be a religion or belief, such as Protestants and Catholics within Christianity.
- **A belief** means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief
- **A “philosophical belief”** must
 - Be genuinely held;
 - Be a belief and not an opinion or viewpoint based on the present state of information available;
 - Be a weighty and substantial aspect of human life and behaviour;
 - Attain a certain level of cogency, seriousness, cohesion and importance;
 - Be worthy of respect in a democratic society, compatible with human dignity and not conflict with the fundamental rights of others.

7.2 Any cult involved in illegal activities is not covered. Beliefs such as humanism and atheism would be covered.

7.3 Discrimination because of religion or belief can occur even where both the discriminator and recipient are of the same religion or belief.

7.4 People who are of the same religion or belief share the protected characteristic of religion or belief.

7.5 This section replaces similar provisions in the Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2006.

8. Sex

- Formally defined as Gender, both men and women are protected under the Act.
- A reference to a person who has a particular protected characteristic is a reference to a man or to a woman
- A reference to persons who share a protected characteristic is a reference to persons of the same sex
- Men share the sex characteristic with other men and women with other women.

9. Sexual Orientation

9.1 The Act protects bisexual, gay, heterosexual and lesbian people and is defined as a person’s sexual orientation towards:

- people of the same sex as him or her (in other words the person is a gay man or a lesbian)
- people of the opposite sex from him or her (the person is heterosexual)
- people of both sexes (the person is bisexual).

9.2 People sharing a sexual orientation mean that they are of the same sexual orientation and therefore share the characteristic of sexual orientation.

9.3 The definition is designed to replicate the effect of similar provisions in the Employment Equality (Sexual Orientation) Regulations 2003 and the Equality Act 2006.

10. Caste

10.1 The Government Equalities Office consultation, Caste in Great Britain and Quality Law, on how to address caste discrimination closed on 18 September 2017.

10.2 This consultation explores how to ensure that there is appropriate and proportionate legal protection against unlawful caste discrimination with due consideration given to how such protection would be implemented in practice. Caste is not currently included within the Equality Act 2010.

Types of Discrimination

11. Direct Discrimination

11.1 This is where a person is treated less favourably than another because of a protected characteristic they have or are thought to have (see perception discrimination below), or because they associate with someone who has a protected characteristic (see discrimination by association below).

11.2 In limited circumstances, employers can directly discriminate against an individual for a reason related to any of the protected characteristics where there is an occupational requirement. The occupational requirement must be crucial to the post and a proportionate means of achieving a legitimate aim.

Example 1

An employer refuses to employ a woman because she is pregnant. This is direct discrimination on grounds of pregnancy.

Example 2

Paul, a senior manager, turns down Angela's application for promotion to a supervisor position. Angela, who is a lesbian, learns that Paul did this because he believes the team that she applied to manage are homophobic. Paul thought that Angela's sexual orientation would prevent her from gaining the team's respect and managing them effectively. This is direct sexual orientation discrimination against Angela.

12. Indirect Discrimination

12.1 This is where a provision, criterion or practice is applied that is discriminatory in relation to individuals who have a relevant protected characteristic (although it does not explicitly include pregnancy and maternity, which is covered by indirect sex discrimination) such that it would be to the detriment of people who share that protected characteristic compared with people who do not, and it cannot be shown to be a proportionate means of achieving a legitimate aim.

Being proportionate means being fair and reasonable, including showing that ‘less discriminatory’ alternatives have been looked at prior to any decision made. Indirect discrimination can be justified if the employer can show that they acted reasonably, i.e. that it is ‘a proportionate means of achieving a legitimate aim’. A legitimate aim might be any lawful decision the employer makes in running the business, but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful.

Example

A small finance company needs its staff to work late on a Friday afternoon to analyse stock prices in the American finance market. The figures arrive late on Friday because of the global time differences. During the winter some staff would like to be released early on Friday afternoon in order to be home before sunset – a requirement of their religion. They propose to make the time up later during the remainder of the week.

The company is not able to agree to this request because the American figures are necessary to the business, they need to be worked on immediately and the company is too small to have anyone else able to do the work.

The requirement to work on Friday afternoon is not unlawful indirect discrimination as it meets a legitimate business aim and there is no alternative means available.

13. Harassment

13.1 This is where there is unwanted conduct, related to one of the protected characteristics (other than marriage and civil partnership, and pregnancy and maternity) that has the purpose or effect of violating a person's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment. It does not matter whether or not this effect was intended by the person responsible for the conduct.

Example

Example 1

Paul is disabled and is claiming harassment against his line manager after she frequently teased and humiliated him about his disability. Richard shares an office with Paul and he too is claiming harassment, even though he is not disabled, as the manager's behaviour has also created an offensive environment for him.

Example 2

Steve is continually being called gay and other related names by a group of employees at his work. Homophobic comments have been posted on the staff noticeboard about him by people from this group. Steve was recently physically pushed to the floor by one member of the group but is too scared to take action. Steve is not gay but heterosexual; furthermore the group know he isn't gay. This is harassment because of sexual orientation.

Harassment applies to all protected characteristics except for pregnancy and maternity and marriage and civil partnership. Employees will be able to complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves.

13.2 Employees are also protected from harassment because of perception and association.

14. Bullying

14.1 Bullying is offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means which undermine, humiliate, denigrate or injure the individual or a group of employees. This kind of conduct is usually sustained.

Example

Examples of bullying are:

- shouting at an employee in front of others
- sarcastic comments deliberately aimed at the individual
- ridiculing someone or deliberately setting them up to fail
- overbearing supervision or other misuse of power or position
- making threats about job security without foundation
- undermining a competent worker by overloading and constant criticism

14.2 For further information on bullying and harassment please see the Council's Grievance Policy.

15. Associative Discrimination

15.1 This is where an individual is directly discriminated against or harassed for association with another individual who has a protected characteristic (although it does not cover harassment because of marriage and civil partnership, and pregnancy and maternity).

Example

June works as a project manager and is looking forward to a promised promotion. However, after she tells her boss that her mother, who lives at home, has had a stroke, the promotion is withdrawn. This may be discrimination against June because of her association with a disabled person.

16. Perceptive Discrimination

16.1 This is where an individual is directly discriminated against or harassed based on a perception that he/she has a particular protected characteristic when he/she does not, in fact, have that protected characteristic (other than marriage and civil partnership, and pregnancy and maternity).

Example

Jim is 45 but looks much younger. Many people assume that he is in his mid-20's. He is not allowed to represent his company at an international meeting because the Managing Director thinks that he is too young. Jim has been discriminated against on the perception of a protected characteristic of age.

17. Victimisation

17.1 This occurs where an employee is subjected to a detriment, such as being denied a training opportunity or a promotion because they made or supported a complaint or raised a grievance, or because they are suspected by the employer of doing so. However, an employee is not protected from victimisation if they acted maliciously or made or supported an untrue complaint.

Example 1

A blind employee raises a grievance that the employer is not complying with its duty to make reasonable adjustments, and is then systematically excluded from all meetings; such behaviour could amount to victimisation.

Example 2

Anne makes a formal complaint against her manager because she feels that she has been discriminated against because of marriage. Although the complaint is resolved through the organisation's grievance procedures, Anne is subsequently ostracised by her colleagues, including her manager. She could claim victimisation.