

Supplement to the Statutory Code of Practice on Services, Public Functions and Associations

This supplement does not form part of the Statutory Code of Practice. It is intended to assist those using the Code by identifying developments in the law since the Code was approved and is a statement of the law as at 31 March 2014. It should be read alongside the Code.

References to paragraph numbers below are references to paragraphs in the Statutory Code.

Para.	Note
1.11	Age as a protected characteristic The provisions on age came into force on 1 October 2012. For services and public functions, the protection is limited to those over 18. For associations the protection covers individuals of any age. There are a number of exemptions applicable (see paragraph 13.48 below). The Commission intends to publish an age supplement to the Services, Public Functions and Associations Code of Practice in 2014 or 2015.
2.54	Manifestation of religion or belief A person does not have to prove that the manifestation of their religion or belief is a core component of the religion or philosophical belief they follow. It

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may instead be a means by which they choose to express their adherence to their religious belief.¹

Further, when pursuing a claim of indirect religion or belief discrimination a claimant does not need to establish that others are also put at a particular disadvantage by a provision, criterion or practice; rather the question is whether the limitation on the claimant's right to manifest their religious beliefs under the European Convention of Human Rights is proportionate given the legitimate aims of the service provider. This is because protection of the right to manifest religion under the Convention does not require 'group disadvantage' to be shown.²

For a full discussion on the balancing exercise required following the cases of *Eweida, Chaplin, Ladele and McFarlane v the United Kingdom* (2013) applications numbers 48420/10, 59842/10, 51671/10 and 36516/10 in the ECtHR, see the Commission's guidance; *Religion or belief in the workplace: an explanation of recent European Court of Human Rights judgments* available at: www.equalityhumanrights.com

3.12 Relationships which have ended

The Equality Act prohibits conduct or treatment amounting to victimisation which is meted out to an individual after a relationship has ended where the conduct or treatment amounts to victimisation. The wording in the Code is no longer correct: such treatment will be dealt with under the provision in the Equality Act which applies to discrimination or harassment occurring after termination of the relationship.³

¹ *Mba v Mayor & Burgesses of the London Borough of Merton* [2013] EWCA Civ 1562 and *Eweida, Chaplin, Ladele & McFarlane v United Kingdom* (2013) applications numbers 48420/10, 59842/10, 51671/10 and 36516/1.

² *Mba v Mayor & Burgesses of the London Borough of Merton* [2013] EWCA Civ 1562, and *Eweida, Chaplin, Ladele & McFarlane v United Kingdom* (2013) applications numbers 48420/10, 59842/10, 51671/10 and 36516/1.

³ *Jessemey v Rowstock Limited & Another* [2014] EWCA Civ 185.

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3.30 **What the Act says**

Usually a service provider will not be responsible for discrimination, harassment or victimisation by someone other than their employee or agent (see paragraphs 3.29-3.32), however, case law indicates that it is possible that they could be found to be legally responsible for failing to take action where they have some degree of control over a situation where there is a continuing course of offensive conduct, but they do not take action to prevent its recurrence even though they are aware of it happening.⁴

3.39 – **Meeting obligations under the Act: avoiding discrimination, and good**
3.41 **practice**

Taking these steps will also help reduce the likelihood that a service provider will be found to be legally responsible for any discrimination, harassment or victimisation carried out by a person who is not their employee or agent, in circumstances where they might otherwise be found to be legally responsible (see paragraph 3.30 above).⁵

4.4 **What the Act says**

Less favourable treatment because of age is not unlawful if the treatment is a proportionate means of achieving a legitimate aim. Legitimate aims should be outcomes which are socially positive or in the public interest. What is proportionate is fully explained in paragraphs 5.31 – 5.36.

⁴ *Sheffield City Council v Norouzi* [2011] IRLR 897 (and see *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] IRLR 327).

⁵ *Sheffield City Council v Norouzi* [2011] IRLR 897 (and see *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] IRLR 327).

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4.31	Comparators in sexual orientation cases
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The Supreme Court has confirmed that the fact that one person is a civil partner while another is married is not a material difference between the circumstances relating to each case. This means that where any less favourable treatment is carried out because a person is not married, regardless of whether they are in a civil partnership, this will be unlawful direct sexual orientation discrimination.⁶

Further, a service provider must also now treat those who are married to a person of the same sex in the same way as they treat service users married to persons of the opposite sex.

5.16	The comparative approach
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The position is somewhat different where the claim is one of indirect religion or belief discrimination. Where the Convention applies to a claim of indirect discrimination connected to religion or belief, it is not necessary to show that others are also put at a particular disadvantage by a provision, criterion or practice; rather the question is whether the limitation of an individual's right to manifest their religious beliefs is proportionate given the legitimate aims of the employer.⁷ This is because protection of the right to manifest religion under the Convention does not require 'group disadvantage' to be shown.⁸

6.3	What is discrimination arising from disability?
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The required knowledge is of the *facts* of the service user's disability but a service provider does not also need to realise that those particular facts meet the legal definition of disability (paragraphs 2.8-2.16).⁹

⁶ *Bull & Another v Hall & Another* [2013] UKSC 73.

⁷ *Mba v Mayor & Burgesses of the London Borough of Merton* [2013] EWCA Civ 1562.

⁸ *Mba v Mayor & Burgesses of the London Borough of Merton* [2013] EWCA Civ 1562 and *Eweida, Chaplin, Ladele & McFarlane v United Kingdom* (2013) applications numbers 48420/10, 59842/10, 51671/10 and 36516/1.

⁹ *Gallop v Newport City Council* [2013] EWCA Civ 1583.

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	When deciding if a service user is likely to be considered to be disabled, a service provider has to form their own judgement and cannot simply rubber-stamp a medical adviser's opinion that a user is not disabled. ¹⁰
6.14	What if the service provider does not know that the person is disabled? The required knowledge is of the <i>facts</i> of the service user's disability but a service provider does not also need to realise that those particular facts meet the legal definition of disability (paragraphs 2.8 – 2.16). ¹¹
6.16	What if the service provider does not know that the person is disabled? When deciding if a service user is likely to be considered to be disabled, a service provider has to form their own judgement and cannot simply rubber-stamp a medical adviser's opinion that a user is not disabled. ¹²
12.15	What is unlawful discrimination by an association? The Act also makes it unlawful for an association to discriminate against former members, former associates, and former guests. ¹³
Chapter 13	Exceptions There are exceptions which apply to marriage where one party to the marriage is transgendered (or is reasonably believed to be so), and in the case of same-sex marriages. Where one of a couple marrying is transgendered (or is reasonably believed to be so) and has acquired his or her gender under the Gender Recognition Act 2004, the Equality Act does not impose any obligation on a person to solemnise such a marriage. This exception applies, in England and Wales, to clergy of the Church of England and the Church of Wales

¹⁰ *Gallop v Newport City Council* [2013] EWCA Civ 1583.

¹¹ *Gallop v Newport City Council* [2013] EWCA Civ 1583.

¹² *Gallop v Newport City Council* [2013] EWCA Civ 1583.

¹³ See, *Jessemev v Rowstock Limited & Another* [2014] EWCA Civ 185 and section 108, Equality Act 2010.

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and others authorised by the Marriages Act 1949 to solemnise religious marriages. In Scotland it applies to a Minister of the Church of Scotland, or a Minister, clergyman, pastor or priest of a prescribed religious body, or any other person recognised by a religious body and entitled to solemnise a religious marriage.¹⁴

A further exemption arises in the case of same-sex marriage. An individual or a religious organisation in England and Wales is not prevented by the Equality Act 2010 from refusing to carry out, attend or take part in a religious marriage ceremony of a same-sex couple.¹⁵ A similar exemption is expected to apply in relation to Scotland prior to the end of 2014. This exemption does not apply to civil marriage registrars.¹⁶

13.48 Services for particular groups

Specific exceptions apply in the case of age discrimination. These exceptions are as follows:

- a service provider may provide concessions in respect of a service to people of a particular age group (such as discounts for pensioners or schemes such as the young person's Railcard);
- a service provider may restrict certain holiday services to people of a particular age group where an essential feature of the holiday is to bring together people of that age group (such as Saga or 18–30 holidays);
- where the law restricts the supply of certain services by age (such as the sale of alcohol or tobacco), a service provider can withhold such services from persons who appear to be below that age and cannot provide satisfactory proof of their age, provided the service provider has displayed

¹⁴ Schedule 3, para 24, Equality Act 2010

¹⁵ An exception is made in respect of employees or agents who might otherwise be personally liable for breaches of the Equality Act 2010 for refusing to conduct or participate in a religious marriage ceremony of a same sex couple; an individual cannot be held personally liable for a refusal to conduct or participate in such a marriage (section 110(5A), Equality Act 2010).

¹⁶ Schedule 3, para 24 (in the case of gender reassignment) and Schedule 3, para 25A, Equality Act 2010 (as inserted by the marriage (Same Sex Couples Act 2013)).

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a sign notifying the public of that;

- owners of sites housing residential mobile homes occupied as permanent residences may restrict occupation of their land to persons over a particular age in certain circumstances.
- another exemption applies to the provision of financial services. This is defined as a service of a banking, credit, insurance, personal pension, investment or payment nature. Where a service provider undertakes an assessment of risk for the purposes of providing a financial service, it may only take account of a person's age insofar as this is relevant to risk and where the information is obtained from a source that it is reasonable to rely upon.

For example: A medical insurance provider may take account of a customer's age in pricing a health insurance policy where there exists a body of reliable medical evidence that supports the connection between the customer's age and the risk of developing medical conditions covered by the policy. It may not do so where its risk assessment is based on untested assumptions, stereotypes or generalisations or on evidence from an unreliable source.¹⁷

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Insurance

The exceptions in relation to insurance, sex and gender reassignment and pregnancy and maternity have been repealed.

For contracts concluded on or after 21 December 2012 differential treatment in the provision of insurance is lawful only in respect of the protected characteristics of disability and age, in some circumstances (and subject to prescribed conditions).

However, the exceptions will still to apply to contracts concluded before 21 December 2012 permitting some specified differential treatment.¹⁸

¹⁷ Schedule 3, Equality Act 2010 as amended by the Equality Act 2010 (Age Exceptions) Order 2012, SI 2012/2466.

¹⁸ The relevant exemption was repealed by the Equality Act 2010 (Amendment) Regulations 2012, SI 2012/2992.

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13.80 – 13.86	Sex, gender reassignment, pregnancy and maternity and insurance These exemptions have been repealed. The exceptions will still apply to contracts concluded before 21 December 2012. ¹⁹
14.10 – 14.11	Conciliation The Commission no longer has power to assist by providing conciliation services. However, for some sorts of cases mediation services are available through the courts service, and these can be used instead of waiting for a case to be heard by a judge. Mediation has the advantage of generally reducing cost and may successfully settle a claim without the inconvenience of a trial. You can find information about mediation services, including how to find mediators registered with the Civil Mediation Council for England and Wales here at: www.justice.gov.uk/courts/mediation and for Scotland at: www.scottishmediation.org.uk/
14.27 – 14.31	The Procedure for obtaining information The questions procedure was abolished on 6 April 2014. ²⁰ It will continue to apply to complaints about breaches of the Equality Act 2010 that occurred before 6 April 2014. ²¹ It will remain good practice for persons who think that they may have been unlawfully discriminated against, harassed or victimised under the Equality Act 2010 to seek relevant information before issuing a formal claim. This may prevent the complaint escalating to a formal claim. The Government Equalities Office has issued a good practice guide on asking and responding to questions about discrimination in the provision of services and public functions. This can be found at: www.gov.uk/government/publications/asking-and-responding-to-questions-

¹⁹ The relevant exemption was repealed by the Equality Act 2010 (Amendment) Regulations 2012, SI 2012/2992.

²⁰ S.138 of the Equality Act 2010 was repealed by s.66 of the Enterprise and Regulatory Reform Act 2013 which was brought into effect from 6 April 2014 by the Enterprise and Regulatory Reform Act 2013 (Commencement No.6, Transitional Provisions and Savings Order 2014).

²¹ S.66(2) of the Enterprise and Regulatory Reform Act 2013.

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[of-discrimination-in-the-provision-of-goods-and-services-and-public-functions.](#)
