

# Birmingham City Council Equality Act 2010 Fact Sheet

## RACE EQUALITY

The Equality Act (2010) consolidates all previous equality legislation and extends some protections to groups that were not previously covered. Although there are similarities, there are also significant differences concerning the types of protection afforded the different protected groups. The protected characteristics include: **age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.**

This Fact Sheet discusses the provisions with regard to the characteristic, **RACE**. It forms part of a series of fact sheets that highlight the relevant points pertaining to the Act for each of the nine protected characteristics. More detailed guidance and information about the provisions can be found in the [Equality Act 2010 Statutory Code of Practice Employment](#) and the Equality Act 2010 [Statutory Code of Practice Services, public functions and associations](#). The Equality Act replaced all the existing equalities legislation including the Race Relations Act 1976 and the Race Relations Amendment Act.

### **WHAT IS THE PROTECTED CHARACTERISTIC OF RACE?**

For the purposes of the Act, "race" includes color, nationality and ethnic or national origins. People who have or share characteristics of colour, nationality or ethnic or national origins can be described as belonging to a particular racial group. A racial group can be made up of two or more different racial groups.

#### **Examples**

- Colour includes being black or white
- Nationality includes being a British, Australian or Swiss citizen
- Ethnic or national origins include being from a Roma background or of Chinese heritage
- A racial group could be "black Britons" which would encompass those people who are both black and who are British citizens

### **WHAT FORM OF PROTECTION DOES THE ACT PROVIDE?**

Those who share the protected characteristic of Race are protected from four different types of discrimination i.e. direct and indirect discrimination, harassment and victimisation, as discussed below.

**Direct Race discrimination** is where someone is unfairly treated because of their race. This occurs when a person is able to show that they have been treated less favorably on racial grounds than others in similar circumstances. To prove this, it will help if you can give an example of someone from a different racial group who, in similar circumstances, has been, or would have been, treated more favorably than you.

**Examples of direct discrimination:** Someone who is not appointed because of their race, colour or national origin

**Indirect discrimination** is where a rule or practice or a criterion is applied to everyone, but particularly disadvantages people who share a racial characteristic but which cannot be justified.

The discrimination can be on grounds of colour or nationality or secondly on grounds of race, ethnic or national origin.

### **Examples of indirect discrimination**

#### Racial

- A Black African employee applied for the post of equal opportunities manager in his organization. He was assessed as having the skills and ability for the job. However, his application was rejected because, unknown to him, the post was open only to permanent staff at higher grades than his. Monitoring data showed that the organization had no permanent Black African employees at the grades in question.
- The employment tribunal held that there was no justification for the requirement, and that it amounted to indirect discrimination on racial grounds.

#### Colour or nationality

- A rule that employees or pupils must not wear headgear could exclude Sikh men and boys who wear a turban, or Jewish men or boys who wear a yarmulke, in accordance with practice within their racial group.

**Harassment** is unwanted conduct which violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person. In this case the harassment is based on a person's race or ethnic or national origin.

**Example:** A council tenant is constantly receiving verbal abuse and threats, racist graffiti related to their colour, ethnicity and nationality. The actions could lead the victims making a request to their landlord for move to get away from the harassment

**Victimisation** is where someone who has made a complaint of discrimination or harassment or supported someone else's complaint is victimised as a consequence.

**Example of victimisation:** A customer has arranged to be a witness and to give evidence in a court case against a service provider and in response the service provider threatens not to serve that customer in future if they go ahead with giving evidence<sup>1</sup>.

Furthermore, there are two supplementary provisions that protect people from direct discrimination or harassment. These include:

- Discrimination by **Perception** – e.g. where a person is discriminated against or harassed because s/he is mistakenly thought to share a protected characteristic such as race.
- Discrimination by **Association** – e.g. where a person is discriminated against or harassed because s/he is associated with a person who has a protected characteristic such as race.

### **ARE THERE ANY EXCEPTIONS WHERE DISCRIMINATION IS ALLOWED?**

There are some circumstances where some race based actions, measures and practices that are considered “to be justifiable, beneficial or needed for good public policy reason”.

Discrimination can be justified if you can show that you acted reasonably in managing your business, i.e. that it is ‘a proportionate means of achieving a legitimate aim’. A *legitimate aim* might be any lawful decision you make in running your business or organization, but if there is a discriminatory effect. The sole aim of reducing costs is likely to be unlawful. Being proportionate really means being fair and reasonable, including showing that you’ve looked at ‘less discriminatory’ alternatives to any decision you make.

**Positive Action** - As part of complying with the general equality duty, relevant bodies could consider whether taking positive action is open to them and, if so, whether it would be appropriate to take that action.

**When is positive action lawful?** - It will be lawful for a relevant body to take positive action where it reasonably thinks that people who share a protected characteristic:

- a) Experience a disadvantage connected to that characteristic; or
- b) Have needs that are different from the needs of persons who do not share that characteristic; or
- c) Have disproportionately low participation in an activity compared to those who do not share that protected characteristic.

Where the conditions above apply, the relevant body may take any action which is proportionate to meet the aims stated in the Act. Those aims are:

- a) Enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage
- b) Meeting those needs, or
- c) Enabling or encouraging persons who share the protected characteristic to participate in that activity.

**Positive action is not the same as positive discrimination, which is unlawful.**

**Example:** A local authority provides a housing training scheme aimed at BME staff who are under represented in the workforce in particular functions such as housing officers / technical staff

## **DO PUBLIC BODIES HAVE A DUTY TO PROMOTE RACE EQUALITY?**

The Equality Act includes a public sector Equality Duty (also known as the General Duty), which requires public bodies, when exercising their functions, to have due regard to the need to eliminate race discrimination, advance equality of opportunity for different groups, and foster good relations between people who share the protected characteristic and those who do not.

Accordingly, local authorities need to be proactive in tackling race discrimination, inequalities, in identifying and responding to the needs of people who share the protected characteristic of race when designing and delivering services.

### **What does this duty cover?**

Employment - Redundancy and retirement - A person cannot be chosen for redundancy just because their race, colour or nationality. The process for redundancy must be fair and balanced for all employees.

An employer cannot force a person to retire just because of their race, colour or national origin.

Service Delivery - In line with the public sector duty, local authorities need to be proactive in tackling discrimination and inequalities and in identifying and responding to the needs of people who share the protected characteristic of race when designing and delivering services. In practice this means any organisation providing services to the public need to make the appropriate arrangement to ensure all service outlets and the services themselves are fully accessible. Factors need to include - provision of interpretation and translations and catering for cultural, religious, dietary needs.

## **Resources and Contacts:**

1. Equality Act 2010 Statutory Code of Practice Employment [http://www.equalityhumanrights.com/uploaded\\_files/EqualityAct/employecode.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employecode.pdf)
2. Equality Act 2010 Statutory Code of Practice Services, public functions and associations [http://www.equalityhumanrights.com/uploaded\\_files/EqualityAct/servicescode.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/servicescode.pdf)
3. Government Equality Office - <http://homeoffice.gov.uk/equalities/>
4. EHRC (Equality & Human Rights Commission), the statutory body with responsibility to enforce and promote equality across the protected characteristics [www.equalityhumanrights.com](http://www.equalityhumanrights.com)