

## **‘Your Rights’**

**The Race & Equality Centre offers a confidential legal advice and representation service in cases of discrimination and human rights. This information booklet contains information about your rights under the law as well as more about our service.**

### **How can Cheshire, Halton & Warrington Race & Equality Centre help me?**

We have been running a legal discrimination casework service for over 13 years; we are specialists in this field and can give you advice and assistance with your case, from initial enquiry through to representation at tribunal or court. We deal with all forms of discrimination under the Equality Act 2010.

### **Do you charge?**

Our service was initially funded by the Equality and Human Rights Commission (EHRC), and was free of charge, but in April 2012 the EHRC stopped grant funding organisations, so we have had to replace this with a fee charging service. We recognise that many of clients are not in a position to pay up front and so we only make a charge when we secure a successful settlement or award for you, and then we will deduct 35%. The money we receive is ploughed straight back into the charity to help other people in similar situations.

### **Do you only help those in Cheshire?**

The short answer is no. Anyone who thinks they have experienced discrimination can access our service, in England and Wales (Scottish law is different).

### **Do you do anything other than discrimination work?**

Discrimination work is our speciality, but because many discrimination cases are tied into employment matters, we often do general employment work too. If you haven't got a discrimination case, but a general employment matter, we may also be able to help you. Get in touch.

### **I want to take a claim, what happens next?**

The process of making a claim of discrimination takes time. Employment cases are heard at an employment tribunal and all others by a county court. There are strict time limits on claiming discrimination - three months for employment cases and six months for everything else. In all cases however you now **MUST** contact ACAS **before** you make a claim, to try and reach agreement on the case – this is called their ‘Early Conciliation Service’. You’ll get a certificate from ACAS that we will need to submit your employment tribunal claim if conciliation doesn’t work.

The deadline for applying to the tribunal is extended by the amount of time you spend in conciliation (eg, if you spend 2 weeks in conciliation, the deadline for applying to the tribunal is 2 weeks later.) You’ll always get at least 1 month to apply to the Tribunal.

Although there are possible extensions to those times, you should contact us as soon as the incident happens, whether you are in the process of conciliation or not.

The caseworker will need to see all relevant documents such as your contract of employment and any letters from the employer that relate to your case. Because there are charges to submit a tribunal application now, if you are eligible for fee remission we will also need documents to show your income and expenditure and any benefits you are claiming.

The caseworker will take the details of the case from you and advise you of the next steps s/he will take on your behalf. Generally, in discrimination cases the next stage will be service of a Questionnaire on the individual or organisation you are claiming against. This questionnaire sets out your claim and asks questions designed to elicit evidence to support your case. The reply to this will help us to assess the strength of your claim.

The next stage is to make a claim to the tribunal or county court.

There is a fee for submitting Tribunal cases as well as for county court claims, but if you are on benefits you will likely to receive a fee remission (we can help you make this application).

In employment cases, the tribunal often requests a case management discussion in order to clarify the issues and make sure everything runs smoothly on the day of the hearing. The hearing itself can last for more than one day, depending how complicated your case is, the number of witnesses, and what facts need to be proved to show discrimination.

### **How long will all this take?**

It really depends on how complicated your case is, factually or legally. Once an employment tribunal accepts a case, it usually takes between 3 and 6 months for the case to be heard. Also, note that even when a claim is accepted by an employment tribunal in practical terms very few cases reach the stage of a hearing as the majority of cases are settled before the hearing or early on before proceedings are started.

### **Where are you based and when are you open?**

We are based at:

The Unity Centre 17 Cuppin Street Chester CH1 2BN

The Centre is open to the public between 10am-4pm Monday to Friday, but appointments are available outside of those times.

Casework contact: Onyeka Uzonwanne Telephone: 01244 400730 E-mail: [onyeka@chawrec.org.uk](mailto:onyeka@chawrec.org.uk)

## **The Law**

**The following is intended to be a brief guide to help potential clients identify if they have been discriminated against. However, it is not comprehensive and we would always urge you to seek professional advice from our caseworkers rather than relying on this information.**

All of the previous discrimination legislation has now been harmonised into one act – the **Equality Act 2010**. The Act makes it unlawful to discriminate on the basis of:

- Race
- Disability
- Age
- Gender reassignment
- Sexuality
- Gender
- Marriage and civil partnerships
- Pregnancy
- Religion or belief

The Act provides protection in the following areas – employment, services and public functions, premises, education and clubs and associations. However, the only area that protects on all these grounds is in employment.

### **Types of Discrimination**

**Direct discrimination** - When someone is treated less favourably than another person **'because of'** their protected characteristic they have or are thought to have. Always unlawful except:

- where the protected characteristic is age, and the less favourable treatment can be justified as a proportionate means of achieving a legitimate aim
- in relation to the protected characteristic of disability, where a disabled person is treated more favourably than a non-disabled person
- where the Act provides an express exception which permits directly discriminatory treatment that would otherwise be unlawful

At a job interview, an applicant mentions she has a same sex partner. Although she is the most qualified candidate, the employer decides not to offer her the job. This decision treats her less favourably than the successful candidate, who is a heterosexual woman. If the less favourable treatment of the unsuccessful applicant is because of her sexual orientation, this would amount to **direct discrimination**.

**Discrimination by association** - this is new in the Equality Act 2010. This is direct discrimination against someone because they associate with someone who has a protected characteristic

A lone father caring for a disabled son has to take time off work whenever his son is sick or has medical appointments. The employer appears to resent the fact that the worker needs to care for his son and eventually dismisses him. The dismissal may amount to direct **disability discrimination against the worker by association** with his son.

**Perception discrimination** - This is where someone is discriminated against because someone perceived they had a protected characteristic.

An employer rejects a job application form from a white woman whom he wrongly thinks is black, because the applicant has an African-sounding name. This would constitute **direct race discrimination based on the employer's mistaken perception**.

**Discrimination arising from a disability** – this is new under the Equality Act, which says that treatment of a disabled person amounts to discrimination where:

- an employer treats the disabled person unfavourably;
- this treatment is because of something arising in consequence of the disabled person's disability; and
- the employer cannot show that this treatment is a proportionate means of achieving a legitimate aim,

**unless** the employer does not know, and could not reasonably be expected to know, that the person has the disability.

It is different from direct discrimination, which occurs when someone is treated less favourably because of the disability itself rather than something arising in consequence of their disability.

An employer dismisses a worker because she has had three months' sick leave. The employer is aware that the worker has multiple sclerosis and most of her sick leave is disability-related. The employer's decision to dismiss is not because of the worker's disability itself. However, the worker has been treated unfavourably because of something arising in consequence of her disability (namely, the need to take a period of disability-related sick leave).

**Indirect discrimination** - it is about applying a provision, criteria or practice (PCP) that applies to all but particularly disadvantages people who share a protected characteristic. Indirect discrimination can be objectively justified.

A bus company adopts a policy that all female drivers must re-sit their theory and practical tests every five years to retain their category D licence. Such a policy would amount to direct discrimination because of sex. In contrast, another bus company adopts a policy that drivers on two particular routes must re-sit the theory test. Although this provision is apparently neutral, it turns out that the drivers on these two routes are nearly all women. This could amount to **indirect sex discrimination** unless the policy can be objectively justified.

**Harassment** - Definition applies to all protected characteristics *except* pregnancy, marriage and civil partnerships in employment. The definition of harassment as described below does not apply to the protected characteristics of sexual orientation or religion or belief in the provision of services, the exercise of public functions or the acts of associations. However, where unwanted conduct related to either of these protected characteristics results in a person suffering a detriment, that person could bring a claim of direct discrimination

3 definitions of harassment in the act:

**a) General 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

**b) Conduct of a Sexual Nature** – where A engages in unwanted conduct of a sexual nature and the conduct has the purpose or effect of violating B

**c) Rejection of or submission to conduct of a sexual nature** – where A or another person engages in unwanted conduct of a sexual nature (or is related to gender reassignment or sex) and the conduct has either the purpose or effect of violating B and because of B's rejection or submission to the conduct A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct

Employees can complain about behaviour that they find offensive even if it is not directed at them and even if they do not possess the relevant characteristic themselves

#### **General harassment example**

In front of her male colleagues, a female electrician is told by her supervisor that her work is below standard and that, as a woman, she will never be competent to carry it out. The supervisor goes on to suggest that she should instead stay at home to cook and clean for her husband. This could amount to harassment related to sex as such a statement would be self-evidently unwanted and the electrician would not have to object to it before it was deemed to be unlawful harassment.

### **Conduct of a sexual nature example**

Conduct 'of a sexual nature' can cover verbal, non-verbal or physical conduct including unwelcome sexual advances, touching, forms of sexual assault, sexual jokes, displaying pornographic photographs or drawings or sending emails with material of a sexual nature.

### **Rejection or submission to conduct of a sexual nature**

A shopkeeper propositions one of his shop assistants. She rejects his advances and then is turned down for a promotion which she believes she would have got if she had accepted her boss's advances. The shop assistant would have a claim for harassment.

**Third party harassment** – has been removed from the legislation.

It doesn't have to be the same 3rd party on each occasion.

It also relates to job applicants (so not just employees).

A Ghanaian shop assistant is upset because a customer has come into the shop on Monday and Tuesday and on each occasion has made racist comments to him. On each occasion the shop assistant complained to his manager about the remarks. If his manager does nothing to stop it happening again, the employer would be liable for any further racial harassment perpetrated against that shop assistant by any customer.

**Victimisation** - When someone is treated badly as a result of:

- Making a complaint or supporting a complaint under the Equality Act
- Raised a grievance or supported a grievance under the Equality Act or
- They are **suspected** of doing so

In 2006, a trade union staff representative acted on behalf of a colleague in a claim of age discrimination. In 2009, he applies for a promotion but is rejected. He asks for his interview notes which make a reference to his loyalty to the company and in brackets were written the words 'tribunal case'. This could amount to victimisation despite the three-year gap between the protected act and the detriment.

## **The Protected Characteristics**

### **Race**

The Act defines 'race' as including colour, nationality and ethnic or national origins. Everyone has an ethnic origin but the provisions of the Act only apply where a person belongs to an 'ethnic group' as defined by the courts. This means that the person must belong to an ethnic group which regards itself and is regarded by others as a distinct and separate community because of certain characteristics. These characteristics usually distinguish the group from the surrounding community.

### **Disability**

People who currently have a disability are protected because of this characteristic against harassment and discrimination – including discrimination arising from disability and a failure to comply with the duty to make reasonable adjustments.

### **Age**

Age is defined in the Act by reference to a person's age group. In relation to age, when the Act refers to people who share a protected characteristic, it means that they are in the same age group.

An age group can mean people of the same age or people of a range of ages. Age groups can be wide (for example, 'people under 50'; 'under 18s'). They can also be quite narrow (for example, 'people in their mid-40s'; 'people born in 1952'). Age groups may also be relative (for example, 'older than me' or 'older than us').

People are not protected because of this characteristic by the Equality Act in any other areas apart from employment at the moment.

### **Gender reassignment**

The Act defines gender reassignment as a protected characteristic. People who are proposing to undergo, are undergoing, or have undergone a process (or part of a process) to reassign their sex by changing physiological or other attributes of sex have the protected characteristic of gender reassignment.

People no longer have to be under medical supervision to be protected under this characteristic:-

A person who was born physically female decides to spend the rest of his life as a man. He starts and continues to live as a man. He decides not to seek medical advice as he successfully passes as a man without the need for any medical intervention. He would be protected as someone who has the protected characteristic of gender reassignment.

In order to be protected under the Act, there is no requirement for a transsexual person to inform their employer of their gender reassignment status. However, if a worker is proposing to undergo gender reassignment or is still in the process of transitioning, they

may want to discuss their needs with their employer so the employer can support them during the process.

## **Sexual Orientation**

Sexual orientation is a protected characteristic. It means a person's sexual orientation towards:

- persons of the same sex (that is, the person is a gay man or a lesbian);
- persons of the opposite sex (that is, the person is heterosexual); or
- persons of either sex (that is, the person is bisexual).

Sexual orientation relates to how people feel as well as their actions.

Sexual orientation discrimination includes discrimination because someone is of a particular sexual orientation, and it also covers discrimination connected with manifestations of that sexual orientation. These may include someone's appearance, the places they visit or the people they associate with.

## **Gender**

Sex is a protected characteristic and refers to a male or female of any age. In relation to a group of people it refers to either men and/or boys, or women and/or girls. A comparator for the purposes of showing sex discrimination will be a person of the opposite sex. Sex does not include gender reassignment or sexual orientation.

## **Marriage and civil partnerships**

A person who is married or in a civil partnership has the protected characteristic of marriage and civil partnership. Only people who are married or in a civil partnership are protected against discrimination on this ground. The status of being unmarried or single is not protected. People who only intend to marry or form a civil partnership, or who have divorced or had their civil partnership dissolved, are not protected on this ground.

People are not protected on this ground in any other area apart from employment, although a civil partner treated less favourably than a married person could bring a claim for sexual orientation discrimination instead.

## **Religion or belief**

The protected characteristic of religion or belief includes any religion and any religious or philosophical belief. It also includes a lack of any such religion or belief.

A religion need not be mainstream or well known to gain protection as a religion. However, it must have a clear structure and belief system. Denominations or sects within religions, such as Methodists within Christianity or Sunnis within Islam, may be considered a religion for the purposes of the Act.

Belief means any religious or philosophical belief and includes a lack of belief. For a philosophical belief to be protected under the Act:

- it must be genuinely held;

- it must be a belief and not an opinion or viewpoint based on the present state of information available;
- it must be a belief as to a weighty and substantial aspect of human life and behaviour;
- it must attain a certain level of cogency, seriousness, cohesion and importance;
- it must be worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental rights of others.

#### Pregnancy

The Act lists pregnancy and maternity as a protected characteristic. It is unlawful for an employer to subject a woman to unfavourable treatment during the 'protected period' as defined by the Act.