



The Equality Act - How we need to apply it in optometric practice

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Equality Act 2010

“The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society.

It replaced previous anti-discrimination laws with a single Act, making the law easier to understand and strengthening protection in some situations. It sets out the different ways in which it’s unlawful to treat someone”.

<https://www.gov.uk/guidance/equality-act-2010-guidance>



Before the Equality Act 2010 there was:

Before the Act came into force there were several pieces of legislation to cover discrimination, including:

- **Sex Discrimination Act 1975**
- **Race Relations Act 1976**
- **Disability Discrimination Act 1995**



Why the Equality Act 2010 was created...

“An Act to make provision to require Ministers of the Crown and others when making strategic decisions about the exercise of their functions to have regard to the desirability of reducing socio-economic inequalities; to reform and harmonise equality law and restate the greater part of the enactments relating to discrimination and harassment related to certain personal characteristics; to enable certain employers to be required to publish information about the differences in pay between male and female employees; to prohibit victimisation in certain circumstances; to require the exercise of certain functions to be with regard to the need to eliminate discrimination and other prohibited conduct; to enable duties to be imposed in relation to the exercise of public procurement functions; to increase equality of opportunity; to amend the law relating to rights and responsibilities in family relationships; and for connected purposes.”

<https://www.legislation.gov.uk/ukpga/2010/15/introduction>



How does this work in optometric practice?

GOC Standards of Practice for Optometrists & Dispensing Opticians:

13. Show respect and fairness to others and do not discriminate



Show respect and fairness to others and do not discriminate

13.2 Promote equality, value diversity and be inclusive in all your dealings and do not discriminate on the grounds of gender, sexual orientation, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief.

13.3 Ensure that your own religious, moral, political or personal beliefs and values do not prejudice patients' care. If these prevent you from providing a service, ensure that you refer patients to other appropriate providers.



Discussion Points:

- What are the 9 protected characteristics under the Equality Act 2010?
- What is the difference between direct and indirect discrimination?



The 9 Protected Categories are:

Age

Disability

Gender Reassignment

Marriage & Civil Partnership

Pregnancy & Maternity

Race

Religion or Belief

Sex

Sexual Orientation



Direct Discrimination

“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

<https://www.legislation.gov.uk/ukpga/2010/15/section/13>



Combined Discrimination: Dual Characteristics

“A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.”

<https://www.legislation.gov.uk/ukpga/2010/15/part/2/chapter/2/crossheading/discrimination>



Indirect Discrimination

“A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.”

<https://www.legislation.gov.uk/ukpga/2010/15/part/2/chapter/2/crossheading/discrimination>



Indirect Discrimination

“Indirect Discrimination occurs when an organisation’s policies, procedures, ways of working or rules which apply to everyone have the effect that people with a certain protected characteristic are put at a disadvantage when compared with those who do not share that characteristic.

Indirect discrimination is not usually intentional, but more likely to be the result of an oversight on behalf of whoever created the policy, procedure or rule. Therefore, it can often be presumed that indirect discrimination is a by-product of unconscious bias and is sometimes referred to as Institutional Discrimination.”

Scenario 1:



A patient comes in for a routine eye examination. The patient has been coming to the practice since childhood and is now 25. Since their last visit the patient now identifies as a female and will be in the process of gender reassignment soon.

The patient asks the receptionist to change their gender status on the records before going in for the eye examination. The receptionist advises that the optometrist would have to change the records.

During the examination the patient advises the optometrist of the situation, as previously discussed with the receptionist. The Optometrist changes the patient's name on the record but not the title and gender. During the handover the Optometrist accidentally calls the patient Mr Smith.

After the dispensing process is completed the patient receives a text message a week later for "Mr Smith" advising to book a collection appointment.

Upon attending the collection appointment the patient is unhappy about the situation and wants to make a formal complaint as they feel they have been discriminated against.



Discussion Points:

- What types of discrimination may have occurred?
- Was the receptionist and optometrist correct by not changing the gender of the patient on the record?
- How could the situation have been handled differently?



Gender Reassignment

“(1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

(2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.

(3) In relation to the protected characteristic of gender reassignment—

- a. a reference to a person who has a particular protected characteristic is a reference to a transsexual person;**
- b. a reference to persons who share a protected characteristic is a reference to transsexual persons.”**

<https://www.legislation.gov.uk/ukpga/2010/15/section/7>



Gender Recognition Act 2004

“In 2004 the Gender Recognition Act was established and from then on permitted gender changes to be recognised lawfully/formally using a Gender Recognition Certificate (GRC). Official records, including medical records, cannot be changed without the patient presenting a GRC, where they have had their change in gender lawfully recognised. Only from then on, the new gender can be referred to legally in the records, from the date on the GRC.”

<https://www.abdo.org.uk/wp-content/uploads/2020/03/Gender-Recognition-Guidance-FINAL.pdf>



Communication Is Key

- Although the gender cannot be legally changed on a medical record without a Gender Recognition Certificate, the title could be changed and notes added to the record to ensure all staff are aware of the patient's preferred pronouns.
- This must be communicated with the patient so all parties understand the legality regarding medical records.
- Although the patient has the right to gender reassignment and to be treated fairly without discrimination, the sex you are born with can have implications with regards to medical conditions. For example, being female is a risk factor for closed angle glaucoma(1) so it is important from a healthcare perspective to have the relevant knowledge to provide the best care for the patient.
- Although this information is relevant to the health record we must respect the patients privacy (GOC standard 14) so this information should not be shared with members of staff who are not part of the clinical process.

1. Vajaranant, Thasarat S et al. "Gender and glaucoma: what we know and what we need to know." *Current opinion in ophthalmology* vol. 21,2 (2010): 91-9. doi:10.1097/ICU.0b013e3283360b7e

Scenario 2:



A child comes in for their first eye examination after concerns raised by the teacher that the child was struggling. The child is 6 years old and comes in with their mother who is Romanian and speaks very little English.

The examination concludes that the child is myopic and requires full time correction. You offer Myopia Management options in practice but during the handover the Optometrist informs the Dispensing Optician to just go for the free NHS spectacles as the patient's parent probably won't be able to afford the treatment as the mother had NHS funded spectacles recently, and that she probably wouldn't understand if they tried to explain myopia management.



Discussion Points:

- What protected characteristics have been discriminated against in this situation, if any?
- What reasonable steps should the practice team take to ensure the patient has all the relevant information to make an informed choice about their child's care?



The Human Rights Act 1998

- Socio-economic Status
- Education Level
- Nationality (which is different to race)
- Regional or national accent
- Appearance

“Although these are not protected characteristics under the Equality Act 2010, public authorities have responsibilities not to discriminate under the Human Rights Act 1998.”



GOC Standards For Businesses 1.3 Communication is clear and effective

1.3.1 Provides information that is accessible to patients in a way they understand, taking into consideration individual needs and requirements. This could include what might be necessary in specific contexts such as requirements in the provision of NHS services; additional needs of the patient such as a learning disability; and any speech or communication difficulties;



Are we legally obliged to provide an interpreter?

“The *NHS Accessible Information Standard Guidance for Community Optical Practices* states that NHS service users should receive information in a suitable format, where possible of their choice. The Standard is a legal requirement that only applies to needs that relate to a learning disability, sensory loss or other impairment – not those who may require foreign language translation.”

Reasonable Adjustments:



Discussion Point:

According to the Equalities Act 2010, reasonable adjustments should be made to ensure that a disabled person is not directly or indirectly discriminated against.

What examples could be considered “reasonable adjustments”?

Reasonable Adjustments:



An employer makes structural or other physical changes such as widening a doorway, providing a ramp or moving furniture for a wheelchair user; relocates light switches, door handles, or shelves for someone who has difficulty in reaching; or provides appropriate contrast in decor to help the safe mobility of a visually impaired person.

An employer reallocates minor or subsidiary duties to another worker as a disabled worker has difficulty doing them because of their disability. For example, the job involves occasionally going onto the open roof of a building but the employer transfers this work away from a worker whose disability involves severe vertigo.

Reasonable Adjustments:



An employer should consider whether a suitable alternative post is available for a worker who becomes disabled (or whose disability worsens), where no reasonable adjustment would enable the worker to continue doing the current job. This might also involve retraining or other reasonable adjustments such as equipment for the new post or a transfer to a position on a higher grade.

An employer allows a disabled person to work flexible hours to enable them to have additional breaks to overcome fatigue arising from their disability. It could also include permitting part-time working, or different working hours to avoid the need to travel in the rush hour if this is a problem related to an impairment. A phased return to work with a gradual build-up of hours might also be appropriate in some circumstances.

Reasonable Adjustments:



An employer allows a disabled person who has recently developed a condition to have more time off work than would be allowed to non-disabled workers to enable them to have rehabilitation. A similar adjustment would be appropriate if a disability worsens or if a disabled worker needs occasional treatment anyway.

An employer might have to provide special equipment (such as an adapted keyboard for someone with arthritis or a large screen for a visually impaired workers), an adapted telephone for someone with a hearing impairment, or other modified equipment for disabled workers (such as longer handles on a machine).

Reasonable Adjustments: When must they be considered?



By law, an employer must consider making reasonable adjustments when:

- they know, or could be expected to know, an employee or job applicant has a disability
- an employee or job applicant with a disability asks for adjustments
- an employee with a disability is having difficulty with any part of their job
- an employee's absence record, sickness record or delay in returning to work is because of or linked to their disability

<https://www.acas.org.uk/reasonable-adjustments>

What is reasonable?



What's 'reasonable' will depend on each situation. The employer needs to consider carefully if the adjustment:

- will remove or reduce the disadvantage for the person with the disability
- is practical to make
- is affordable by the employer or business
- could harm the health and safety of others

<https://www.acas.org.uk/reasonable-adjustments>