



Discrimination:

Public law challenges

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Equality Act 2010 & Indirect Discrimination

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29 June 2026



The provisions

What are we taking about?



Equality Act 2010, Part 3, Services & Public Functions

- Section 29(2): “A service-provider (A) must not, in providing the service, discriminate against a person (B) -
 - (a) as to the terms on which A provides the service to B;
 - (b) by terminating the provision of the service to B;
 - (c) by subjecting B to any other detriment.”
- Section 29(7) provides that a duty to make reasonable adjustments applies to a service provider and to a person who exercises a public function that is not the provision of a service to the public or a section of the public.



Equality Act, indirect discrimination

S.19(1) “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.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if—

- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
- (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

Equality Act 2010, reasonable adjustments

- The nature of the duty to make reasonable adjustments is identified in section 20. Section 20(1) provides that where the Act imposes a duty to make reasonable adjustments on a person (A), sections 20 – 22 and the applicable Schedule applies.

- The duty comprises three requirements. The first requirement is as follows:

“The first requirement is a requirement, where a provision, criterion or practice of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.”

- Section 21 provides:

“(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments. (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person. (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purposes of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.”

Reasonable adjustments

- Schedule 2 relevant schedule for Part 3 of the Act.
- Schedule 2, para 1 says this Schedule applies where a duty to make reasonable adjustments is imposed on A by this Part.
- Schedule 2, para 2(1) states that A must comply with the first, second and third requirements.
- Para 2(2) provides: “For the purposes of this paragraph, the reference in section 20(3), (4) or (5) to a disabled person is to disabled persons generally.” (Section 20(4) and (5) identify the second and third requirements).
- The effect of para 2(2) in respect of section 20(3), is that the first requirement arises where a PCP of A’s “puts disabled persons generally at a substantial disadvantage in relation to a relevant matter”; in turn, the duty is to take such steps as is reasonable to have to take “to avoid the disadvantage”.
- Schedule 2, para 2(4) explains that “the relevant matter” for these purposes is the “provision of the service, or the exercise of the function, by A”.
- Schedule 2, para 2(5) provides that being placed at a “substantial disadvantage” in relation to the exercise of a function means: (i) if a benefit may be conferred in the exercise of the function, being placed at a substantial disadvantage in relation to the conferment of the benefit; and (ii) if a person is or may be subjected to a detriment in the exercise of the function, suffering an unreasonably adverse experience when being subjected to that detriment.



Case law update

What's new?





***Asimwee v LB Lambeth* - reasonable adjustments**

Asimwee v LB Lambeth [2026] EWHC 1479 (KB) (1)

- Accepted that the exercise of the Defendant’s statutory duties under Part 7 of the HA 1996 are “public functions” for the purposes of the case.
- The Claimant relied upon a provision criterion or practice (“PCP”) that Lambeth placed a considerable proportion of its homelessness applicants in out-of-borough temporary accommodation. It was said that this put people with disabilities at a substantial disadvantage because they are more likely to have location specific needs in respect of care, social support and medical treatment.
- The Claimant identified the following adjustments as reasonable steps the Defendant should have taken to avoid this disadvantage:
 - Placing people with disability-related needs in the areas in which those needs can be met (“the first adjustment”);
 - Where that is not possible, taking very active steps to move people with disabilities into accommodation that is suitable, in terms of location, within a very short timeframe (“the second adjustment”);
 - Investigating whether to use the council’s social housing stock under Part 6 of the HA 1996 (“the third adjustment”); and/or
 - Commissioning additional ad hoc accommodation to meet disability-related needs (“the fourth adjustment”).

Asimwee v LB Lambeth [2026] EWHC 1479 (KB) (2)

01

Section 20 is to be read with section 21

- Systematic steps
- No suggestion in the statutory language that A may also have failed to comply with the duty as a result of the way it has acted or not acted towards a particular disabled individual.

02

Section 21(2)

- “that duty” plainly refers to a breach of the reasonable adjustments duty identified in subsection (1).

03

Effect of section 21(2)

- an individual can only have a claim for breach of the duty if they are within the class of disabled persons who are substantially disadvantaged by the PCP and thus owed the duty.
- Absent this it would not be clear who has a cause of action where there has been a failure to comply with a duty to make reasonable adjustments.

The analysis is specific to Schedule 2 cases

Asimwee v LB Lambeth [2026] EWHC 1479 (KB) (3)

01

Relevance of individual circumstances?

It is self-evident that failings experienced by an individual within the relevant class of disabled persons may be indicative of a broader general failure to take the reasonable steps that are required to avoid the disadvantage arising from the relevant PCP.

02

What went wrong at first instance?

Her Honour Judge Bloom wrongly believed it was irrelevant to consider why things had gone wrong in the Claimant's case when assessing whether the Defendant had taken reasonable steps to avoid the group disadvantage.



R. (on the application of RR) v Enfield LBC – the need for evidence

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Breach of section 19

- Under s.19(2)(a) and (b) it was necessary to establish that the PCP had been applied to a group of persons with a protected characteristic when compared with another group who did not share that characteristic.
- The comparison was required to show that the PCP had a disproportionate impact on the group of persons with a protected characteristic.
- It was also necessary to show a causal link between the disadvantage and the PCP.
- Failed for a want of evidence.

Breach of section 20

- Section 20 provided that a public authority had a duty to make a reasonable adjustment if certain requirements were met.
- The material requirement was set out in s.20(3).
- Failed - there was no evidence from which a court could infer that there had been a contravention of s.20(3).
- In particular, there was no evidence that the PCP was putting disabled persons at a substantial disadvantage.



***R. (on the application of Begum) v Tower Hamlets
LBC – indirect discrimination***

R. (on the application of Begum) v Tower Hamlets **LBC [2025] EWCA Civ 1049**

- Use of homelessness 'information database' – does it discriminate against women applicants?
- Definition of PCP [42]-[44]
- Use of statistical evidence [56]-[60]
- Causation [64]-[65]

PERMANENTLY
LIFT TEMPORARILY OUT
OF ORDER.



WE APOLOGISE FOR THE
INCONVENIENCE

BUT WE WILL STILL TAKE
FULL RENTAL

***R. (on the application of Sims) v Hackney LBC –
which venue?***

R. (on the application of Sims) v Hackney LBC [2025] EWHC 2271 (Admin)

- Permission to bring a claim for judicial review.
- Most grounds refused on the basis that they had become academic.
- Grounds 5 & 6 – Equality Act 2010 grounds.
- Permission refused:
 - The county court would be a more appropriate venue;
 - It is able to hear evidence and resolve any disputes of fact, including in relation to any assessment of damages;
 - The Claimant was entitled as of right to pursue the Equality Act grounds in the County Court.



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Policy update

Tara O'Leary 29 June 2026



Updated Code of practice for services, public functions and associations

- Section 14 Equality Act 2006
- Existing Code adopted in 2011
- Long delayed: consultation Oct 24-Jan 25 and May-June 2025, sent to Minister for Women & Equalities in September 2025
- Laid before Parliament 21 May 2026
- If no resolution is passed to disapprove the draft within 40 days, gov shall set a date for it to come into force – **30 June 2026**



Updated Code of practice for services, public functions and associations

- *1.6 The Code does not impose legal obligations. Nor is it an authoritative statement of the law: only the courts and tribunals can provide such authority. However, the Code can be used in evidence in legal proceedings brought under the Act. Courts and tribunals must consider any part of the Code that appears relevant to any questions arising in such proceedings.*
- *1.7 If providers of services, those exercising public functions and associations follow the guidance in the Code, it may help them avoid an adverse decision by a court in such proceedings.*





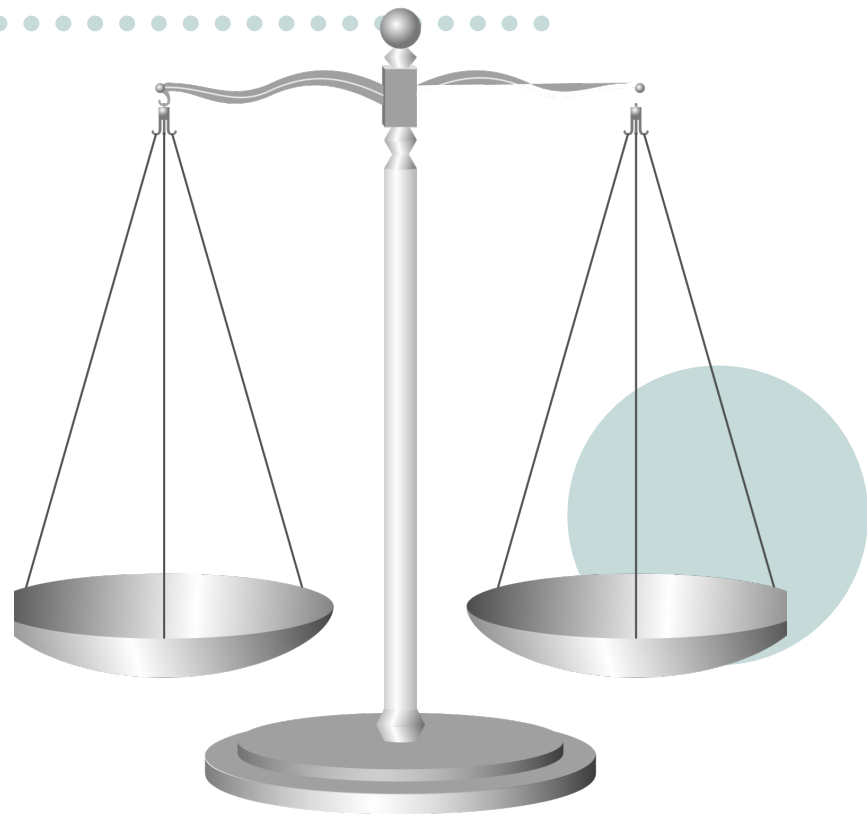
Appendix – meaning of disability

- Expanded explanation of “substantial” adverse effects of impairments
- Expanded explanation of fluctuating impairments: e.g. where particular event causes adverse effect but that event is unlikely to recur, effect is unlikely to recur
- Long Covid specifically mentioned as a new illness which may have a long-term, substantial effect which could fall within definition of disability
- Menopause specifically mentioned, if claimant can demonstrate that their impairment meets threshold



Other changes

- Many practical “Examples” of what different terms mean or how prohibitions and discrimination operate have updated or replaced
- *E.g.* section on discrimination in provision of goods and services now includes section (11.74) on remote provision via websites and apps – limits of territorial jurisdiction for information society service provides
- Chapter 7 on anticipatory duty to make reasonable adjustments



For Women Scotland v Scottish Ministers [2025] UKSC 16

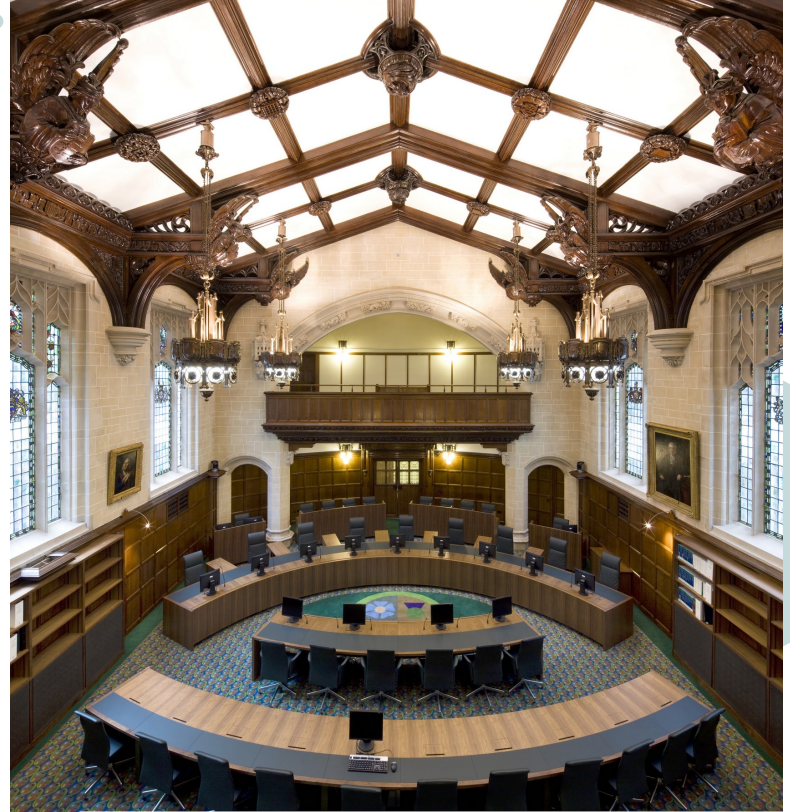
The question :



- What is the meaning of “sex” in s.11 of the Equality Act 2010?
- Does “woman” in that context include transgender women with a Gender Recognition Certificate issued under the Gender Recognition Act 2004?
- In other words, does the EA 10 need to be read in light of the GRA 2004?
- Context: statutory guidance from Scottish Ministers said “women” included trans women with a GRC
- Purpose of guidance was to improve gender representation on public boards via statutory creation of ‘gender representation targets’

The answer

- No: “woman” does not include trans woman with a GRC
- EA 10 “trumped” the GRA 2004 – history including Sex Discrimination Act 1975
- “Sex” in the EA 10 is binary – corresponds to biological characteristics at birth rather than gender as a social construct
- “Woman” and “man” bear same meaning across all sections of the EA 10 – importance of consistency



What does this mean?

- Trans people continue to benefit from protection under:
 - Protected characteristic of gender reassignment - s.7 EA 10
 - Also sex, e.g. if trans woman suffers sex discrimination because perceived to be a woman
- It is lawful to provide single-sex services if certain conditions are met: s.31(10) and Schedule 3 paras. 27 and 28 EA 10
 - “Single sex” would now mean excluding trans people, e.g. trans women from female single-sex spaces or services
- **NB** But is it mandatory to do so – or discriminatory not to do so?

Interim Guidance

“Interim update on the practical implications of the UK Supreme Court judgment” – 25 April until 15 Oct 2025

*It is **not compulsory** for services that are open to the public to be provided on a single-sex basis or to have single-sex facilities such as toilets. These can be single-sex if it is a proportionate means of achieving a legitimate aim and they meet other conditions in the Act. **However, it could be indirect sex discrimination against women if the only provision is mixed-sex.***

R (Good Law Project) v EHRC [2026] EWHC 279 (Admin) - 13 February 2026

- JR to the policy failed: the guidance was *“lawful, accurate and compliant with”* EHRC’s statutory duties
- **Standing:** GLP was not *“personally or directly affected by the decision challenged”* – its *“sincere interest”* in the subject of the challenge was not enough [15-17]. But 3 individual trans claimants did have standing.
- Helpful pithy summary of statutory provisions [28] and guidance [31]. Guidance reflected those provisions.
- Left open possibility trans-inclusive bathrooms are lawful: *i.e.* they are not true ‘single-sex’ bathrooms but other men asked to use male-only bathroom are not treated unfavourably. But all turns on facts [61].

Updated Code of Practice for services etc.

- Chp 2 Definition of “Gender reassignment”
 - EA 10 refers to “transsexuals” but notes “trans” should now be used instead
 - No minimum age to have this PC – includes children and young people
 - Non-binary or gender fluid identities only protected if they meet definition of PC set out in Act
 - GRCs (2.49-2.53)
 - Definition of “sex” – Chapter 2 (2.87-2.91): biological sex
- Asking about someone’s sex (13.161-182)
 - Generally asking a trans person about sex at birth is a breach of Art. 8 unless necessary & justified
 - “Likely” legitimate to seek to ensure service users understand that a service is single-sex, especially where *“there is clear evidence of an issue”* with access by members of opposite sex
 - Need for caution, sensitivity & measures being no more than necessary

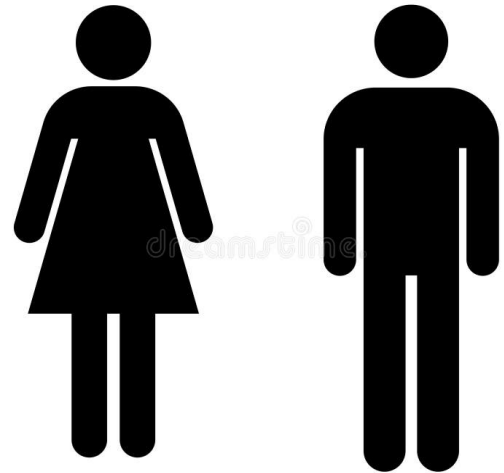
Updated Code



- Provision of single-sex services (13.99-152)
- Allowing trans people to use service means it is not single-sex
- Providing single-sex services is not discriminatory if doing so is prop. means of achieving legit aim and certain statutory conditions are met – e.g. Condition 5

“The service is for, or is likely to be used by, more than one person at the same time and a woman might reasonably object to the presence of a man, or vice versa.”

- Justification for single-sex services (13.113-133)
- Trans-inclusive services *“very likely to amount to unlawful sex discrimination against people of opposite sex not allowed to use it ... could also be unlawful [sex discrimination or] harassment against women using the service”*





Other cases

Sex Matters v City of London Corporation [2026] EWHC 149 (Admin)

- Challenge to interim policy/practice permitting trans-inclusive use of Hampstead Heath swimming ponds, pending consultation. Had been in place since 2017.
- Permission for JR refused by Lieven J: challenge premature – an attempt to limit the options available to City of London in its pending consultation [39-40]
- “Highly relevant” the claim was for alleged breach of s.29 EA 10. Courts should only permit JR in exceptional circumstances – County Court remedy [47, 65]
- Standing: “*more appropriate*” for an affected person than org to act [55-65]

OVERTURNED by Court of Appeal [2026] 3 WLUK 930: remitted & listed 3-4 Nov 2026

- “*Arguable*” that above findings were wrong – finding on County Court “*is*” wrong



Thank you

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