

Charity Commission asks you to review your objects clause – Equality Act 2010

The Charity Commission takes the view that following the Equality Act 2010 Trustees of charities should:

1. Review their objects clause in their governing document, to see if, as many do, they limit benefits to people with a protected characteristic

Protected characteristics are:

age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

2. If the objects are restricted, the Trustees of the charity need to consider whether their activities meet one of two further tests imposed by the Act.

- The purpose of the limitation must be to prevent or compensate for a disadvantage linked to that protected characteristic.

You pass this test if you can demonstrate that the restriction limits benefit to people with a shared protected characteristic and those individuals suffer a particular disadvantage which is linked to that protected characteristic. For example, if the governing document restricts benefits to people of a particular belief and the object is to relieve poverty among people of that religion, it may not be possible to show that poverty is particularly a problem to people of that faith. If you can't satisfy that test, you have to pass the second test.

- The second test is that the discrimination or limitation must be a proportionate means of achieving a legitimate aim.

The test is met if:

(a) the governing document restricts benefits to those who share a protected characteristic, and

b) the restriction can be justified as being fair, balanced and a reasonable way of carrying out a legitimate aim. The Commission's guidance says a legitimate aim is one that has a reasonable social policy objective. In our example the relief of poverty would be a reasonable objective and the charity would pass the test.

It is not always going to be easy to pass these tests. For example, if the charity's objectives specify that it is to help women facing poverty who are members of a particular religious group, then the exclusion of poor men of the same religious group will only be justifiable if there are particularly convincing and weighty reasons. For example, because research shows that women of that particular religious group are much more prone to fall into poverty than men.

The Commission recommends those who are in doubt as to whether their limitations pass the Equality Act test to take legal advice.

Boards conducting reviews need to fully minute the review and outcome.

What is exactly is meant by “discrimination”

Discrimination is not straightforward. Broadly there are three situations of discrimination.

1. Direct discrimination – That is when you treat an individual less favourably than you treat, or would treat, another because of a protected characteristic. In order for someone to show that they have been directly discriminated against, they must compare how they have been treated to the treatment a person without their protected characteristic is receiving or would receive.
2. Indirect discrimination occurs when you apply a provision, criteria or practice in the same way for all, but this has the effect of putting individuals sharing a protected characteristic at a particular disadvantage when compared to others without the protected characteristic and you cannot show that the provision, criteria or practice is justified as a legitimate means of achieving a legitimate aim. Disadvantage is not defined in the legislation, but the Equality and Human Rights Commission takes the view that as a rule of thumb, a reasonable person would consider that disadvantage had occurred.
3. Discrimination arising from disability which occurs where you treat a person with a disability unfavourably by reason of something connected with their disability and cannot justify it. There need be no intention to discriminate in this case.

Religious or belief organisations

The Act contains special exemptions for organisations whose purposes are to practice or teach a religion or belief, or to provide benefits or engage in activities within the framework of that religion or belief, or foster good relations between persons of different religions or beliefs.

Boards with no restrictions in their objects face differing challenges if they decide to focus the services on a group or section of society in a way which may exclude those with a protected characteristic. For example, a decision to focus support or grants on services to disabled Asian women will constitute discrimination against all disabled men and all non-Asian disabled people. The organisation is not going to be able to rely on the Equality Act provisions and tests set out above and should seek advice.

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