A Handy Guide to Your Obligations Under the Equality Act 2010

Introduction

A key ingredient to a successful hospitality and leisure business is to provide the services your customers want. It is crucial that when providing such services, whether you are a pub, restaurant or hotel, you do so without causing discrimination, in what, how and who you serve. This is because as a service provider the hospitality and leisure sector is governed by the provisions of the Equality Act 2010 which prohibits discrimination. Get it wrong and you will be subjected to litigation and negative publicity.

To help you in navigating this complex area what follows is an overview of what can amount to discrimination and the things you must think about to avoid discriminating, and reduce your risk of a claim by a customer being made against you. For example, we look at whether you are at risk of a claim if you put in place a ‘no dogs allowed’ policy at your premises.

You are prohibited from discriminating against a person with a protected characteristic in the following ways:

- Not providing a person requiring the service, goods or facilities with the service in question.
- Not providing the person with a service, goods or facilities of the quality which the service provider usually provides to the public.
- Not providing the person with the service, goods or facilities in the manner in which, or on the terms on which, the service provider usually provides the service to the public.
- When providing the service, goods, or facilities to a person, discriminating against or victimising them:
  - as to the terms on which the service, goods, or facilities are provided;
  - by terminating the provision of the service, goods or facilities to them; or
  - by subjecting them to any other detriment.
- Harassing a person requiring the service, or a person to whom the service provider provides the service, goods or facilities.

It doesn’t matter whether the service is free, for example, a takeaway food delivery service provided at no charge, or whether it must be paid for - it will still be covered by equality law.

What are the protected characteristics?

<table>
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<th>Age</th>
<th>Disability</th>
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<td>Race</td>
<td>Religion or belief</td>
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<td>Sex</td>
<td>Pregnancy and maternity (inc breast feeding)</td>
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<td>Sexual orientation</td>
<td>Gender reassignment</td>
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What is unlawful discrimination?

Unlawful discrimination can take a number of different forms:

- A nightclub charges a higher price for entry to a man because of their sex where the service provided to a woman is otherwise exactly the same.
- A restaurant decides to apply a ‘no hats or other headgear’ rule to customers. If this rule is applied in exactly the same way to every customer, Sikhs, Jews, Muslims and Rastafarians who may cover their heads as part of their religion will not be able to use the restaurant. Unless the restaurant can objectively justify using the rule, this will be indirect discrimination.
A pub has a ‘no dogs’ rule. If the pub bars a disabled person who uses an assistance dog, not because of their disability but because they have a dog with them, this would be discrimination arising from disability unless the pub can objectively justify what it has done.

A café refuses to serve a customer who has a disabled child with them, but serves other parents who have their children with them.

A member of staff in a pub tells a woman that they will not serve her because they think she is a transsexual person. It is likely the woman has been unlawfully discriminated against because of gender reassignment, even though she is not a transsexual person.

A customer complains that a member of staff in a café told her she was not allowed to breastfeed her baby except in the toilets. Because she has complained, the café tells her she is barred altogether. This is almost certainly victimisation.

Possible issues for your business

- You need to avoid unlawful discrimination if you set conditions on who you serve and the terms and conditions on which you serve them.
- Because your service is likely to be provided at a particular place, you need to consider reasonable adjustments to your premises or to the way you deliver your services.

Deciding who to serve

If you decide who to serve and who not to serve based on a protected characteristic, you risk discriminating against your customers.

For example:
- A hotel or bed and breakfast cannot refuse to give a shared bedroom to a gay or lesbian couple if they give a shared bedroom to opposite sex partners. Nor could they insist on them having a twin room if they would offer a double room to opposite sex partners, and there are double rooms available.
- A hotel has a ‘no pets’ rule and the front desk supervisor refuses to provide a room or honour the booking for a partially sighted guest accompanied by a guide dog because it is against the hotel’s policy. This is likely to be discrimination on the grounds of disability and the policy should be changed to accommodate guide and assistance animals.
- A pub cannot refuse to serve a customer because they are a transsexual person or with a transsexual person. Nor should the transsexual person be given a worse standard of service, for example, by allowing other customers to make hostile remarks or refusing them access to the toilets appropriate to the sex in which they present.*
- A disabled person with a learning disability wishes to book a hotel room. The hotel receptionist pretends that all rooms are taken in order to refuse their booking because of their impairment. This is likely to be unlawful disability discrimination.
- Waiting staff in a restaurant place a person with a severe facial disfigurement at a table out of sight of other customers, despite other tables being free, because they think other customers will find it embarrassing to look at the person. This is likely to be unlawful disability discrimination.

You can still tell customers what standards of behaviour you want from them. However, sometimes how someone behaves may be linked to a protected characteristic (such as a disability). If you set standards of behaviour for your customers or clients, which have a worse impact on people with a particular protected characteristic than on people who do not have that characteristic, you need to make sure that you can objectively justify what you have done. Otherwise, it will be indirect discrimination. If you do set standards of behaviour, you must make reasonable adjustments to them for disabled people and avoid discrimination arising from disability. If you are uncertain we recommend you seek advice to clarify.

What about services provided to people with a particular protected characteristic?

There are limited and specific situations in which you can provide (or refuse to provide) all or some of your services to people based on a protected characteristic.

*Wrong perceptions can still be a cause for discrimination. As to gender reassignment itself the intention of the Equality Act is to protect those “who make a commitment... to live permanently in their non-birth gender”, but not “transvestites or others who choose temporarily to adopt the appearance of the opposite gender”. The EHRC Code clarifies that “Protection is provided where, as part of the process of reassigning their sex, someone is driven by their gender identity to cross-dress, but not where someone chooses to cross-dress for some other reason”. That said, transvestites will be protected from direct discrimination and harassment where the alleged discriminator wrongly perceives them to be undergoing gender reassignment.
These exceptions apply to any organisation which meets the strict tests.

If you normally supply services only for people with a particular protected characteristic (such as women or people of African Caribbean descent), you can carry on providing the service the same way. If you are uncertain we recommend you seek advice to clarify.

For example, a caterer only uses meat from animals which have been slaughtered in a way that conforms to particular religious requirements (Halal or Kosher meat). The caterer does not have to sell non-Halal or non-Kosher meat, even though this means that Muslim and Jewish people are more likely to be customers than others. However, the butcher cannot refuse to sell the Halal or Kosher meat to customers who are not Muslim or Jewish.

If you do not offer a service providing religiously compliant meats you do not need to start doing so.

You can though target advertising or marketing at a group with particular protected characteristics, as long as you do not suggest you will not serve people with a particular characteristic (unless one of the exceptions applies). If you do decide to offer such specific services you need to be prepared to get it right, if not, don’t try it!

Reasonable adjustments to remove barriers for disabled people

If you run a hospitality business, you will need to make sure your premises and the way the services are offered are accessible to disabled people by making reasonable adjustments. You cannot wait until a disabled person wants to use your services, but must think in advance about what people (including your staff) with a range of impairments might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment or a learning disability.

A pub has a flight of steps up to its entrance but it is not permitted by the local authority to build a ramp because this would block the pavement. The pub installs a platform lift so that disabled people with mobility impairments can get into the pub. This is a reasonable adjustment. A nightclub with low-level lighting is very unlikely to have to adjust the lighting to accommodate customers who are partially sighted if this would fundamentally change the atmosphere or ambience of the club. This is unlikely to be a reasonable adjustment.

A Checklist for Service Providers

1. Establish a policy to ensure equality of access to and enjoyment of their services by potential service users or customers from all groups in society.
2. Communicate the policy to all staff, ensuring that they know that it is unlawful to discriminate when they are providing services.
3. Train all staff, including those not providing a direct service to the public, to understand the policy, the meaning of equality in this context and their legal obligations.
4. Monitor the implementation and effectiveness of the policy.
5. Address acts of discrimination by staff as part of disciplinary rules and procedures.
6. Ensure that performance management systems address equality and non-discrimination.
7. Maintain an easy to use, well-publicised complaints procedure.
8. Review practices to ensure that they do not unjustifiably disadvantage particular groups.
9. Consult customers, staff and organisations representing groups who share protected characteristics about the quality and equality of their services and how they could be made more inclusive.
10. Regularly review whether services are accessible to disabled people.
11. Carry out and act on the results of an access audit conducted by a suitably qualified person.
12. Provide regular training to staff which is relevant to the adjustments to be made.
13. Regularly review the effectiveness of reasonable adjustments and act on the findings of those reviews.

Produced by Pitmans LLP, specialist legal advisers to the Hospitality sector. For further information or advice please contact Jonathan Gray via email on jgray@pitmans.com or phone 02380 837785. www.pitmans.com/sectors/hospitality-leisure
Further resources

Equality Act 2010
www.gov.uk/equality-act-2010-guidance

Equality and Human Rights Commission
www.equalityhumanrights.com/

Hospitality, the magazine for hospitality management professionals. Articles available in the Institute of Hospitality’s Online Catalogue.

- Age and interviews / Hatcliff, Carol (2011)
- An accessible £2billion opportunity / Institute of Hospitality (2011)
- Campaign to double women in senior roles (2009)
- Closing the gender gap / Alonso, Alessandra (2010)
- Do looks matter? / Harris, David (2013)
- Language in the workplace / Blackhurst, Alison (2012)
- More equality more profit / Harris, David (2013)
- The case for recruiting and retaining older workers: a business imperative for the hospitality sector / Capita Consulting (2011)
- Women on boards / Lord Davies of Abersoch (2011)

Institute Endorsed Programmes – to view details of endorsed programmes and their provider, see: Endorsement

OpenBritain – listings for accessible accommodation, leisure and tourism sites in Britain
www.openbritain.net

Pitmans LLP – specialist legal advisers to the Hospitality sector. Contact Jonathan Gray via email on jgray@pitmans.com or phone 02380 837785.
www.pitmans.com/sectors/hospitality-leisure

Tourism for All – promotes accessible travel and accommodation in Britain as well as hospitality industry training and information on improving access.
www.tourismforall.org.uk

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Institute of Hospitality, Trinity Court, 34 West Street, Sutton, Surrey SM1 1SH, UK. Tel: +44 (0)20 8661 4900 Fax: +44 (0)20 8661 4901 Email: library@instituteofhospitality.org Website: www.instituteofhospitality.org

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