The Equality Act 2010: Protected Characteristics

The Equality Act 2010 protects people from discrimination on the basis of certain characteristics, known as protected characteristics. These are as follows:

1. Disability
The Equality Act states that a person has disability if they have a physical or mental impairment. The impairment has a long term and substantial adverse effect on their ability to carry out normal day to day activities. (Note: long term means ‘has lasted or is likely to last for at least 12 months or for the rest of the person’s life’. Substantial means more than trivial. There is no need for a person to have a medically diagnosed cause for their impairment; what matters is the effect of the impairment not the cause.

2. Sex (gender)
This refers to the protection of a male or female of any age in employment and service provision. In relation to a group of people, it refers to either men or women or to either boys or girls.

3. Gender reassignment
A person who has the protected characteristic of gender reassignment is known as a transsexual. The Equality Act defines gender reassignment as ‘the process’ that moves away from their biological sex to their preferred gender. (Includes those who are planning to, undergoing or who have undergone the process of GR). The process can be personal and does not have to involve medical treatment.

4. Pregnancy and maternity
Protected period runs throughout pregnancy. Maternity refers to the period of 26 weeks after the birth and includes breastfeeding. A woman is also protected if her baby is stillborn as long as the pregnancy lasted for 24 weeks before she gave birth.

5. Race
In the Equality Act, the term ‘race’ has been redefined to help identify social groups in relation to their national origin, history and culture. Therefore, ‘race’ relates to a person’s:

- Ethnic or national origin
- Nationality
- Colour

6. Religion or Belief
This applies to any religion or philosophical belief. It also includes an absence of religion.

7. Sexual orientation
Sexual orientation means the attraction a person feels towards one sex or another (or both), which determines who they form intimate relationships with or are attracted to.

- Some people are only attracted to those of the same sex (lesbian women and gay men)
- Some people are attracted to people of both sexes (bisexual people)
- Some people are only attracted to the opposite sex (heterosexual people)

Everyone is protected from being treated worse because of sexual orientation, whether they are bisexual, gay, lesbian or heterosexual. Sexual orientation discrimination also covers discrimination connected with manifestations of that sexual orientation.

8. Age
In relation to the Act, ‘age’ only applies to those over 18 years as a protected characteristic in the provision of services and employment.
9. Marriage and Civil Partnership
This applies only to employees and not to service provision.

The main forms of prohibited conduct against those people with protected characteristics are:

**Discrimination, including:**

a) Treating a person worse than someone else because of a protected characteristic (known as direct discrimination).

b) Putting in place a rule or way of doing things that has a worse impact on someone with a protected characteristic than someone without one, when this cannot be objectively justified (known as indirect discrimination).

c) Treating a disabled person unfavourably because of something connected with their disability when this cannot be justified (known as discrimination arising from disability).

d) Failing to make reasonable adjustments for disabled people.

**Harassment:**

Unwanted conduct which has the purpose or effect or violating someone’s dignity or which is hostile, degrading, humiliating or offensive to someone with a protected characteristic or in a way that is sexual in nature.

**Victimisation:**

Treating someone unfavourably because they have taken (or might be taking) action under the Equality Act or supporting somebody who is doing so.

**As well as these characteristics, the law also protects people from being discriminated against:**

- By someone who wrongly perceives them to have one of the protected characteristics
- Because they are associated with someone who has a protected characteristic. This includes the parent of a disabled child or adult or someone else who is caring for a disabled person.

**Positive action is different to positive discrimination which is illegal**

The Equality Act allows service providers to take 'positive action', i.e. proportionate action to overcome disadvantage, meet needs and tackle under-representation.

- The Equality Act allows service providers to improve services to people who share a protected characteristic through positive action, as long as the measures taken meet particular conditions and do not go beyond certain limits.

- Positive discrimination is not allowed where an action treats a person or a group of people better just because of their protected characteristic and does not meet positive action conditions and permitted limits. The only protected characteristic which is an exception to this is disability.

Taking any form of positive action is entirely voluntary. However, to identify possible causes of disadvantage, different needs and under-representation and to develop and evaluate appropriate positive action steps, you may well find it helpful to involve members of relevant groups of users of your services.