

# Evaluation of protected characteristics in the equality act 2010



TABLE OF CASES

Lewish V Malcolm [2008]

H. M. Chief Inspector of Education Children’s Services and Skills V Interim Executive Board of Al-Hijrah School (Brief 1085) 2018

Hextall V Chief Constable of Leicestershire Police [2018]

Saad V Southampton University Hospitals N. H. S. Trust (Brief 1102) [2018]

Bakkali V Greater Manchester Buses (South) Ltd (t/a Stagecoach Manchester) (Brief1102) [2018]

Efobi v Royal Mail Group Ltd (Brief 1078) [2018]

Ayodele V Citylink Ltd and anor (Brief 1088) [2018]

McNeil V Revenue and Customs Commissioners [2019]

Stacey Macken v BNP Paribas London Branch Case no (2208142/2017) (2205586/2018)

McCloud and ors V Chancellor and ors (brief 1063)

Sergeant and ors v London Fire and Emergency Planning Authority and ors (brief 1968)

Smyth V Thomas t/a Indigo Spa Recruitment E. T. case no 3400076/14

Aslam v Rosehill Pharmacy Ltd and ors E. T. case no 2600129/14

Gibbs v Ahmad and partners Westcroft Health Centre and ors E. T. case no 3400583/14

Rumens-Stilling v Stones Solicitors Ltd E. T. Case no 1401373/14

Cherry v Utilitywise PLC ET case no 2503648/13

Ali v Capita Customer Management Ltd [2019]

Chief Constable of Norfolk v Coffey (brief 1087) [2018]

Lofty v Hamis t/a First Café (brief 1091) [2018]

York Council v Grosset (brief 1096) [2018]

Awan v ICTS UK Ltd (brief 1107)

Donelie v Liberata UK Ltd (brief 1098) [2018]

Abertawe Bro Morgannwg University Local Health Board v Morgan (brief 1094) [2018]

Gould v Trustees of St Johns Downshire Hill (Brief 1087)

Mruke v Khan (brief (1096)

Lee v Ashers Baking Company Ltd and ors (brief 1105)

Taiwo v Olaigbe and anor

Onu v Akwiwu and anor (brief 1051) [2016]

Souza v Primark [2017]

Gan Menchem Hendon Ltd v De Groen [2019]

## STATUTES

The Equality Act 2010

Equal Pay Act 1970

Sex Discrimination Act 1975

Race Relations Act 1976

Disability Discrimination Act 1995

Employment Equality (Religion or Belief) Regulations 2003

Employment Equality (Sexual Orientation) Regulations 2003

Employment Equality (Age) Regulations 2006

Equality Act 2006 Part (2)

Equality Act (Sexual Orientation) Regulations 2007

National Minimum Wage Act 1998

Employment Rights Act 1996

Maternity and Parental Leave Regulations 1999

Human Rights Act 1998

Gender Recognition Act 2004

## Equality Act 2020

Equality can be described as an indispensable element within a democratic society. Equality law is a relatively new concept in Britain. What was socially acceptable thirty years ago, could be constituted as discrimination in modern-day society. *Lewisham v Malcolm*<sup>[1]</sup> highlighted severe restrictions and limited definitions for disability-related discrimination claims. To rectify the law and deal with challenges relating to discrimination while also promoting equality and creating a fairer society which ascertains equal protection for all, the Equality Act 2010<sup>[2]</sup> was brought in to strengthen the effectiveness of the legal framework in Britain, thus enhancing levels of security in conjunction with the protected characteristics contained within the act. The act harmonised existing legislation within discriminative laws and extended protection to fields beyond employment. This paper using case law will look at this in detail and offer criticism to the act and look at the potential reforms needed to enhance the effectiveness for which the act was introduced to fulfil.

The act amalgamated nine pieces of primary legislation, Equal Pay Act 1970<sup>[3]</sup>, Sex Discrimination Act 1975<sup>[4]</sup>, Race Relations Act 1976<sup>[5]</sup>, Disability Discrimination Act 1995<sup>[6]</sup>, Employment Equality (Religion or Belief) Regulations 2003<sup>[7]</sup>, Employment Equality (Sexual Orientation) Regulations 2003<sup>[8]</sup>, Employment Equality (Age) Regulations 2006<sup>[9]</sup>, Equality Act 2006 part 2<sup>[10]</sup>, Equality Act (Sexual Orientation) Regulations 2007<sup>[11]</sup>. Alongside 100 pieces of secondary legislation. It created nine protected characteristics, which every person is claimed to be protected by at least one - Age, Disability, Gender reassignment, Race, Religion and Belief, Sex, <https://assignbuster.com/evaluation-of-protected-characteristics-in-the-equality-act-2010/>

Sexual orientation, Marriage and Civil Partnership which is newly incorporated along with Pregnancy and Maternity.

The act deals with various types of discrimination that may occur, direct discrimination defined by EQA S13 (1)[12]Someone treated less favourably than someone else. *H. M. Chief Inspector of Education Children’s Services and Skills V Interim Executive Board of Al-Hijrah School* (Brief 1085) 2018[13].

Indirect discrimination defined in EQA S19 (1)[14]As a practice, policy or rule that applies equally to everyone, but has a worse effect on some people rather than others. *Hextall V Chief Constable of Leicestershire Police* [2018] [15].

Victimisation is defined in EQA S27 (1)[16]As some detrimental treatment. *Saad V Southampton University Hospitals N. H. S. Trust* (Brief 1102) [2018] [17].

Harassment defined by EQA S26 (1)[18]Appears to be a question of fact rather than law. *Bakkali V Greater Manchester Buses (South) Ltd (t/a Stagecoach Manchester)* (Brief1102) [2018][19].

The definition of discrimination varies widely between statutes, but a generalisation of the term is usually treating one person less favourably than another. Employers can be liable for discriminatory acts carried out by employees during employment unless all reasonable steps have been taken to prevent discrimination. EQA S136 (2)[20]establishes a two-stage approach to the burden of proof for discrimination claims. Initially prima

facie burden on the claimant, then the burden switches to the respondent for a non-discriminatory explanation. *Efobi v Royal Mail Group Ltd* (Brief 1078) [2018][21] tries placing the burden of proof on the claimant. However, *Ayodele V Citylink Ltd and anor* (Brief 1088) [2018][22] the Employment Appeals Tribunal stated the *Efobi*[23] The decision was incorrect[24].

The Equality Act 2010[25] Did not bring about massive changes it amalgamated previous discrimination laws while building upon them and filling in identified gaps. It brought in more protected characteristics, previously three and now nine with the new protected characteristics. Public Sector duties have been included in EQA S149[26]. Public sector bodies have obligations to protect from discriminatory treatment by having “ due regard” to eliminate unlawful discrimination, promote equality of opportunities.

EQA S66[27] Sex Equality clauses are written into every contract of employment. It gives equal terms for opposite sex doing comparable work. National Minimum Wage Act 1998[28] Sets the required standard for paid employment; however, this does not distinguish between the gender pay gap. The gender pay gap requires equal pay for equal work for both sexes.

If the employer can establish a ‘ material factor’ defence under EQA S69, [29] It allows the employer to defend equal pay claims by showing that the difference in pay is due to material factors that are neither directly nor indirectly discriminatory. A factor is indirectly discriminatory if women are put at a ‘ particular disadvantage’ compared with men doing equal work unless that factor is objectively justified as a ‘ proportionate means of

achieving a legitimate aim'. McNeil V Revenue and Customs Commissioners [2019][30] Lord Underhill characterised the equality of terms under the act 'unsatisfactorily complicated clauses'.[31]

Despite legislation being in place to protect against the gender pay gap this still appears to be a big problem within the U. K., In fact, this year some high profile names from across business and politics have launched #metoopay campaign to try and reduce the apparent gape effectively. In the case that instigated the campaign Stacey Macken v BNP Paribas London Branch Case No (2208142/2017) (2205586/2018)[32] which was classed as a rare victory for equal public pay.

“ Pay discrepancy concerns were renewed after a report found signs of resentment from professionals who appear to have dismissed gender diversity as a matter of political correctness.”

The pay gap data is described as “ both depressing and galvanising.

It is also claimed that “ bosses can often be blinded by unconscious bias and may end up giving a pay rise to men. who feel confident enough to ask for one while failing to raise pay for a talented young woman in the same role who hopes to be recognised for her work alone.”[33]

This area of the Equality Act 2010[34] is quite clearly in need of reform and does not protect how the legislature intended this is still quite a significant ongoing issue this area covers the protected characteristic of sex and interlinked with Equal Pay Act 1970.[35]



EQA S13 (1)[36]Direct age discrimination occurs where, because of a protected characteristic, A treats B less favourably than A treats others.

Direct age discrimination, unlike other forms of direct discrimination, can be objectively justified as a proportionate means of achieving a legitimate aim

E. Q. A. s13 (2).[37]McCloud and ors v Chancellor and ors (brief 1063)

[38]concluded age-based provisions that favoured older judges were not objectively justified and therefore constituted direct discrimination on the grounds of age, however, Sargeant and ors V London Fire and Emergency Planning Authority and ors (brief 1068)[39]Even though age-related the scheme was ruled justifiable as it was a proportionate means of achieving a legitimate aim.[40]

Despite legislation to protect against ageism being in place for over a decade. Maria Miller MP chair of the Women and Equalities Committee states “ Age discrimination in the workplace is a serious problem, as many older people have discovered, the scale and lack of enforcement uncovered by our enquiry are both alarming and unacceptable.”

Ms Miller stated “ the government and Equality and Human Rights Commission have failed to get to grips with the problem” and added, “ the business case for an age-diverse workforce is clear”.

The committee state that guidelines under equality “ must be made clearer, that prejudice, unconscious bias and casual ageism in the workplace are all unlawful under the act.” The Committee has urged the government to come up with specific plans to address “ discrimination, bias and outdated employment practices.”[41]

<https://assignbuster.com/evaluation-of-protected-characteristics-in-the-equality-act-2010/>

Pregnancy and Maternity EQA S18 (2)[42]Protects women from unfavourable treatment due to pregnancy or suffering from a pregnancy-related illness. A protected period applies from the start of the pregnancy EQA S18 (6)[43].

Employment Rights Act 1996, S99[44]and Maternity and Parental Leave Regulations 1999, Reg20 (3)[45]provide that an employee will be treated as automatically unfairly dismissed if the reason or principal reason for the dismissal is related to the fact that, amongst other things she was pregnant or that she took maternity leave.

Should a candidate voluntarily disclose pregnancy? The below cases would suggest not. Smyth v Thomas t/a Indigo Spa Recruitment E. T. case no 3400076/14[46]the offer of employment withdrawn due to pregnancy discrimination under EQA S18[47]and Aslam v Rosehill Pharmacy Ltd and ors E. T. case no 26000129/14[48]An employer refused to continue the employee's employment. Gibbs v Ahmad and partners Westcroft Health Centre and ors E. T. case no 3400583/14[49]and Rumens-Stilling v Stones Solicitors Ltd E. T. case no 1401373/14[50]Were both cases on pregnancy during probationary periods, the women were dismissed when the employer found out. Cherry v Utilitywise PLC ET case no 2503648/13[51]An employment tribunal is suspicious if the employer raises concerns about employee's performance upon discovering they are pregnant.[52]

Although significant efforts research suggests large numbers of women are subjected to discrimination due to either pregnancy or maternity leave. A possible solution would be to broaden knowledge and understanding of maternity rights and trying to change workplace attitudes and cultures. It

can be argued that maternity rights need expanding and Maternity action are calling upon the government to act on its commitment made in January 2017 to review redundancy protection and recommend the government implement a system similar to Germany's.[53]

Another discussion is Paternity leave and shared parental consent, and *Ali v Capita Customer Management Ltd* [2019][54] a significant factor of this case is shared parental leave is designed for both parents the father does not have a free-standing right direct discrimination was therefore ruled out under EQA S13 (6) (B)[55]

It can be argued that greater workplace equality is required within this area, although this cannot be achieved until there is greater equality in domestic responsibilities. Childcare can be undertaken by either parent and the conditions attached should arguably more equal. It is only a matter of time before the courts could adopt this stance.[56]

Sexual harassment is described as unwanted conduct of a sexual nature which has the purpose or effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Despite increasing awareness of sexual harassment, it remains a significant workplace issue as recognised by the women's equality committee. " It is utterly shameful that in 2018, unwanted sexual comments, touching, groping, and assault are seen as everyday occurrences and part of the culture in many workplaces.[57]

The women's and Equalities Committee published a five-point plan to try to reform sexual harassment suggesting that the government and employers are failing in their responsibilities to tackle sexual harassment.[58]

Disability, it must first be established that a disability exists defined by E. Q. A. S6[59]The impairment must have a long term, adverse effect on that person's ability to carry out typical day to day activities. Chief Constable of Norfolk V Coffey (Brief 1087)[60]Perceived disability. E. Q. A. para 6 Sch 1[61]a particular condition such as cancer constitute a disability and do not need to satisfy E. Q. A. S6[62]Lofty v Hamis t/a First Café (Brief 1091) [2018] [63]. EQA S15[64]employee dismissed due to misconduct caused by disability even if employer aware of disability York Council v Grosset (brief 1096) [2018][65]however if it can be objectively justified as highlighted in Awan v ICTS UK Ltd (brief 1107)[66]. Reasonable adjustments arising from disabilities can only be triggered if the employer knows, and the employee could be at a disadvantage. If the employer is reasonably aware 'constructive knowledge' Donelien v Liberata UK Ltd (brief 1098) [2018] [67]reasonable adjustment timescale is defined in Abertawe Bro Morgannwg University Local Health Board v Morgan (brief 1094) [2018][68]. The overall definition of disability contained within the act is very restrictive; it insists the impairment has substantial and long term impacts which can be traumatic and painful to establish.

The act also covers Marriage was the reason for the discrimination marriage related Gould v Trustees of St Johns Downshire Hill (Brief 1087)[69]

Race defined E. Q. A. S9[70]discrimination on the grounds of ethnicity or national origins Mruke v Khan (brief (1096))[71]

Sexual Orientation significant ruling Lee v Ashers Baking Company Ltd and ors (brief 1105) in line with Taiwo V Olaigbe and anor[72]and Onu V Akwivu and anor (brief 1051) [2016][73]

Religion or belief defined EQA S10[74]Gan Menchem Hendon Ltd V De Groen [2019][75]this could also breach the Human Rights Act 1998 Article eight and nine[76]

Gender Reassignment definition E. Q. A. S7 (1)[77]also covered by the Gender Recognition Act 2004 [2017] allowed trans people to apply for a certificate and was landmark legislation but this application process was particularly gruelling and intrusive[78]Souza v Primark [2017][79]

This paper has discussed the protected characteristics contained within the Equality Act 2010[80], And they offered up criticisms where appropriate and the potential need for reform in certain areas. The act itself is outdated, and some terminology used is not in line with current social acceptability. The act attempted to offer equality but has achieved the adverse effect in areas, and it could be argued that due to the discriminatory nature of the act it is no longer fit for which it is supposed to serve. There is the talk of the Equality Act 2020[81]Which if implemented needs to clarify the law with carefully constructed wording that is more easily interpreted. The Women's Equality Committee have offered outstanding arguments and reports to bring the current act up to date and have made recommendations to the government.

<https://assignbuster.com/evaluation-of-protected-characteristics-in-the-equality-act-2010/>

## BIBLIOGRAPHY

- Discrimination, I. D. S. Employment Law Brief, I. D. S E. M. P. L. Brief 2018, 1108, 7 – 11.
- Court of Appeal rejects equal pay claim based on differential pay distribution, I. D. S. Employment Law Brief, I. D. S Emp. L. Brief 2019, 1117, 3 – 6
- Alysia Blackham, Young Workers and Age Discrimination, tensions and conflicts I. L. J. 2019, 48 (1) 1 – 33
- Kalyeena Makortoff, #metoipay campaign launched to end gender pay discrimination> www. guardian. co. uk2 Oct 2019, accessed 25 Oct 2019
- Caitlin Morrison, more than a million older workers locked out of work due to age discrimination M. P. report says, > www. independant. co. uk, 17 July 2018, Accessed 18 Oct 2019
- Work and Pregnancy discrimination, I. D. S. Employment Law Brief, I. D. S Emp L Brief 2017, 1075, 13 – 18
- News, Employment Law Bulletin, E. M. P. L. B. 2017, 142, 7 – 8
- Sarag Gilzean, Ali V Capita Customer Management Ltd (Case Comment) Employment Law Bulletin
- Dr Sam Middlemiss, New Developments in the law of sexual harassment, juridical review, Jur. Rev. 2019, 3, 269 – 276
- Nicole Busby, Sexual Harassment in the workplace, Employment Law Bulletin, Emp. L. B 2019, 151, 2 – 4

---

[1]Lewish V Malcolm [2008]

[2]The Equality Act 2010

[3]Equal Pay Act 1970

[4]Sex Discrimination Act 1975

[5]Race Relations Act 1976

[6]Disability Discrimination Act 1975

[7]Employment Equality (Religion or Belief) Regulations 2003

[8]Employment Equality (Sexual Orientation) Regulations 2003

[9]Employment Equality (Age) Regulations 2006

[10]Equality Act 2006 (2)

[11]Equality Act (Sexual Orientation) Regulations 2007

[12]E. Q. A., S13 (1)

[13]H. M. Chief Inspector of Education Children’s Service and Skills V Interim Executive Board of Al-Hijrah School (Brief 1085) 2018

[14]E. Q. A., S19 (1)

[15]Hextall V Chief Constable of Leicestershire Police [2018]

[16]E. Q. A., Section 27 (1)

[17]Saad v Southampton University Hospitals N. H. S. Trust (Brief 1102)  
[2018]

<https://assignbuster.com/evaluation-of-protected-characteristics-in-the-equality-act-2010/>

[18]E. Q. A., S26 (1)

[19]Bakkali V Greater Manchester Buses (South) Ltd (t/a Stagecoach Manchester) (Brief 1102) [2018]

[20]EQA, S136 (2)

[21]Efobi V Royal Mail Group Ltd (Brief 1078) [2018]

[22]Ayodele v Citylink Ltd and anor (Brief 1088) [2018]

[23]ibid 21

[24]Discrimination, I. D. S. Employment Law Brief. I. D. S. E. M. P. L. Brief 2018, 1108, 7 – 11

[25]ibid 2

[26]EQA, S149

[27]EQA, S66

[28]National Minimum Wage Act 1998

[29]EQA, S69

[30]McNeil v Revenue and Customs Commissioners [2019]

[31]Court of Appeal Rejects Equal Pay Claim based on differential pay distribution, I. D. S. Employment Law Brief I. D. S. Emp. L. Brief 2019, 1117, 3-6



[32]Stacey Macken V BNP Paribas London Branch Case No (2208142/2017)  
(2205586/2018)

[33]Kalyeena Makortoff, #metoopay campaign launched to end the gender  
pay gap discriminationwww. guardian. co. uk2 Oct 2019

[34]Ibid 2

[35]Ibid 3

[36]E. Q. A., S13 (1)

[37]E. Q. A., S13 (2)

[38]McCloud and ors v Chancellor and ors (short 1063)

[39]Sargeant and ors V London Fire and Emergency Planning Authority and  
ors (short 1068)

[40]Ibid 24

[41]Caitlin Morrison, More than a million older workers locked out of work  
due to age discrimination M. P. report says > www. independant. co. uk17  
July 2018

[42]E. Q. A., S18 (2)

[43]E. Q. A., S18 (6)

[44]Employment Rights Act 1996, S99

[45]Maternity and Parental Leave Regulations 1999, Reg20 (3)

<https://assignbuster.com/evaluation-of-protected-characteristics-in-the-equality-act-2010/>

[46]Smyth v Thomas t/a Indigo Spa Recruitment E. T. case no 3400076/14

[47]EQA, S18

[48]Aslam V Roeshill Pharmacy Ltd and ors E. T. case no 26000129/14

[49]Gibbs v Ahmad and partners Westcroft Health Centre and ors E. T. case no 3400583/14

[50]Rumens-Stilling v Stones Solicitors Ltd E. T. case no 1401373/14

[51]Cherry V Utilitywise PLC ET case no 2503648/13

[52]Work and Pregnancy discrimination, I. D. S. Employment Law Brief, I. D. S Emp L Brief 2017, 1075, 13 – 18

[53]News, Employment Law Bulletin, E. M. P. L. B. 2017, 142, 7 -8

[54]Ali v Capita Customer Management Ltd [2019]

[55]E. Q. A., S13 (6) (B)

[56]Ali v Capita Customer Management Ltd (case comment) Sarah Gilzean  
Employment Law Bulletin

[57]Dr Sam Middlemiss, New developments in the law of sexual harassment,  
Juridical review, jur. rev 2019, 3, 269 -276

[58]Nicole Busby, Sexual Harassment in the workplace employment law  
bulletin, Emp. L. B 2019, 151, 2 – 4

[59]E. Q. A., S6

<https://assignbuster.com/evaluation-of-protected-characteristics-in-the-equality-act-2010/>

[60]Chief Constable of Norfolk v Coffey (Brief 1087)

[61]E. Q. A., Para 6, Sch 1

[62]Ibid 59

[63]Lofty v Hamis t/a First Café (brief 1091) [2018]

[64]EQA, S15

[65]York Council v Grosset (short 1096) [2018]

[66]Awan v ICTS UK Ltd (short 1107)

[67]Donelien v Liberata UK Ltd (short 1098) [2018]

[68]Abertawe Bro Morgannwg University Local Health Board v Morgan (short 1094) [2018]

[69]Gould v Trustees of St Johns Downshire Hill (Brief 1087)

[70]E. Q. A., S9

[71]Mruke v Khan (brief 1096)

[72]Taiwo v Olaigbe and anor

[73]Onu v Akwiwu and anor (brief 1051) [2016]

[74]EQA, S10

[75]Gan Menchem Hendon Ltd v De Groen [2019]

[76]Human Rights Act 1998, Art 8, Art 9

[77]E. Q. A., S7 (1)

[78]Gender Recognition Act 2004

[79]Souza v Primark [2017]

[80]Ibid 2

[81]Equality Act 2020