##### Module I: Equality Act 2010 Cribsheet

##### Slide 2

### Aim of the session:

To explore what equality means in a corporate environment and the responsibilities of both employers and employees in promoting it.

* What is the Equalities Act 2010?
* What does it cover?
* Where does it apply?
* How to report

##### Slide 3

###### Exercise 1: What does “equality” mean to you?

**Option 1:** ask question to the floor and invite discussion

**Option 2:** ask participants to write down their own definition of equality and then discuss

**Discussion points:**

* Protected characteristics
* Equality and Human Rights Commission:

**Slide 4**

###### What is the Equality and Human Rights Commission (EHRC)?

They are a non-departmental public body in England, Scotland and Wales, established by the Equality Act 2006.

The Commission has responsibility for the promotion and enforcement of equality and non-discrimination laws in England, Scotland and Wales

### EHRC on 'equality'

**Slide 5**

**“Equality is about ensuring that every individual has an equal opportunity to make the most of their lives and talents.**

**It is also the belief that no one should have poorer life chances because of the way they were born, where they come from, what they believe, or whether they have a disability.**

**Equality recognises that historically certain groups of people with protected characteristics such as race, disability, sex and sexual orientation have experienced discrimination.”**

### What is the Equality Act 2010?

##### Slide 6-7

* Equality laws in the UK were mainly developed during the 1970s
* The Equality Act consolidated 116 pieces of separate legislation into a single act.
* According to the Equality and Human Rights Commission; “The Act provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. It provides Britain with a discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.”[[1]](#footnote-1)
* It is designed to ensure consistency in the duties of employers, employees, and service providers to make workplaces a fair environment and to comply with the law.

### What does the Equality Act 2010 cover?

##### Slide 8

###### Exercise 2: Protected Characteristics

**Question 1:** What do we mean by “protected characteristics”?

##### Slide 9-10

* The Equality Act covers nine protected characteristics:
	+ Age
	+ Disability
	+ Gender reassignment
	+ Marriage and civil partnership
	+ Pregnancy and maternity
	+ Race
	+ Religion or belief
	+ Sex
	+ Sexual orientation
* Specifically, the Equality Act protects against:
	+ Direct discrimination
	+ Indirect discrimination
	+ Harassment
	+ Victimisation

### Who is included in the Equality Act?

##### Slide 11

* Places covered by the Equality Act include:
	+ Workplaces.
	+ Public service providers, including goods and facilities, such as:
		- hospitals,
		- councils,
		- transport providers,
		- and businesses.
	+ Organisations performing public functions (including voluntary and private organisations, as well as public authorities), such as:
		- Prisons,
		- Government departments,
		- Libraries.
	+ Premises, such as:
		- the selling, letting or sub-letting of premises,
		- the granting of a right to occupy premises (including through a contractual agreement in the case of allotments, moorings, and caravan parks etc.)
	+ Education, including:
		- Schools,
		- Colleges,
		- Universities,
		- Adult learning centres.
	+ Associations which
		- Have at least 25 members;
		- Have membership admissions regulated by the association’s rules and selection processes; and
		- Which are not a trade organisation, such as a business or professional organisation or a trade union.

### Direct Discrimination

##### Slide 12-14

###### Exercise 3: Direct Discrimination

**Question 1:** What do we mean by “direct discrimination”?

* Direct discrimination occurs if you believe that you have received worse treatment compared to other people because you possess a protected characteristic.
* This also includes:
	+ Discrimination by perception (if you were treated worse because someone thinks that you possess that characteristic)
	+ Discrimination by association (if you are treated worse because you are connected to someone who possesses a protected characteristic)
* In order for a case of direct discrimination to be made, you must be able to demonstrate:
	+ A valid comparison (ie. your treatment compared to someone else who has been treated better in similar circumstances)
	+ Or that a person without your protected characteristic would have been treated better in similar circumstances.
* It is possible to experience direct discrimination from someone who shares the same protected characteristic.

### Indirect Discrimination

##### Slide 15-17

###### Exercise 4: Indirect Discrimination

**Question 1:** What do we mean by “indirect discrimination”?

* Indirect discrimination occurs when a policy is implemented that seemingly applies equally to everyone, but which disadvantages people who share a protected characteristic compared to those who do not. (It does not matter whether or not this disadvantage was intentional.)
* To prove indirect discrimination, it must be demonstrated that:
	+ The policy has disadvantaged or will disadvantaged someone on the basis of a protected characteristic.
	+ The organisation cannot provide a reason that is proportional to the level of disadvantage that the policy has/will cause.

### Objective Justification

##### Slide 18-19

* This is when there is indirect discrimination in the workplace or by a service provider and there is a good reason for doing so: “a proportionate means of achieving a legitimate aim”.[[2]](#footnote-2) Citizens Advice use the following examples of what would amount to a legitimate aim, and what would be proportionate:
	+ The fire service requires all job applicants to take a number of physical tests. This could be indirect discrimination because of age, as older people are less likely to pass the tests than younger applicants. But the fire service can probably justify this. Fire fighting is a job which requires great physical capability. The reason for the test is to make sure candidates are fit enough to do the job and ensure the proper functioning of the fire service. This is a legitimate aim. Making candidates take physical tests is a proportionate way of achieving this aim.”[[3]](#footnote-3)
* According to the Equality and Human Rights Commission; To prove objective justification:
	+ “The aim must be a real, objective consideration, and not in itself discriminatory”.[[4]](#footnote-4)

*For example, a policy stating that no lose clothing or jewellery may be worn whilst operating potentially dangerous machinery may be a policy developed to address health and safety requirements, but could preclude the wearing of some forms of religious dress.*

* + “If the aim is simply to reduce costs because it is cheaper to discriminate, this will not be legitimate”.[[5]](#footnote-5)

*For example, a company could not fire female employees to avoid paying for maternity leave*.

* + “Working out whether the means is ‘proportionate’ is a balancing exercise: does the importance of the aim outweigh any discriminatory effects of the unfavourable treatment.
	+ “There must be no alternative measures available that would meet the aim without too much difficulty and would avoid such a discriminatory effect: if proportionate alternative steps could have been taken, there is unlikely to be a good reason for the policy or age-based rule”.[[6]](#footnote-6)

As in the previous example, a policy stating that no lose clothing or jewellery may be worn whilst operating potentially dangerous machinery may be a policy developed to address health and safety requirements, but could preclude the wearing of some forms of religious dress. Therefore, the company must consider whether it could provide appropriate protective clothing that may be placed over religious dress, or another mechanism to ensure that the clothing would not create a safety hazard.

* In terms of direct discrimination, only discrimination on the basis of age may be subject to objective justification (for example, in terms of health and safety or due to legal requirements). There can be no objective justification for direct discrimination against any other protected characteristic.
* There are cases where having a particular protected characteristic may be an occupational requirement, for example, female support workers in women's refuges. Again, this is subject to objective justification.

##### Slide 20

###### Exercise 5: Direct Discrimination, Indirect Discrimination, or Objective Justification?

**Activity:** Participants to be given handouts with various case studies and must decide whether they constitute direct discrimination, indirect discrimination, or objective justification.

**See Appendix I for case studies and discussion points**

### Harassment

##### Slide 24-26

###### Exercise 6: Harassment

**Question 1:** What do we mean by “harassment”?

* According to the Equality and Human Rights Commission, harassment is “unwanted behaviour that you find offensive, where the other person’s behaviour is because:
	+ you have a protected characteristic
	+ there is any connection with a protected characteristic (for example, you are treated as though you have a particular characteristic, even if the other person knows this isn’t true)”.[[7]](#footnote-7)
* This includes any behaviour that is unwelcome or unwanted, even if you haven’t previously objected to it, and must have the “purpose or effect of violating your dignity, or creating a degrading, humiliating, hostile, intimidating or offensive environment for you.”[[8]](#footnote-8)
* It does not matter whether or not the perpetrator intended to create this environment.
* Someone who does not possess the protected characteristic in question is entitled to bring a complaint of harassment.

*For example, in a situation where someone is making racist and derogatory comments about Black people, you may feel that this creates a hostile and intimidating environment, even if you are not yourself Black. Therefore, you are able to bring a claim of harassment on the basis of race.*

* In a court case, a judge would make a decision as to whether or not this constitutes as harassment by assessing how the behaviour made you feel and whether it was *reasonable* for you to feel this way. The fact that a judge is obliged to apply a test of reasonability suggests that there is an objective element to claiming harassment. It is not only about how you feel, but whether the average person would think it was reasonable for you to feel this way.
* Harassment may include:
	+ Verbal or written abuse
	+ Comments on social media
	+ Images and graffiti
	+ Physical gestures
	+ Facial expressions
	+ Banter or jokes
* When it comes to ‘banter’ and jokes, it is important to remember that what someone perceives as funny may vary depending upon their gender, age, culture, religion, and experiences. Therefore, what you may consider light-hearted and humorous may be incredibly offensive to someone else. As such, jokes should always be employed with this knowledge in mind.

##### Slide 27

###### Exercise 7: Harassment?

**Activity:** Participants to be given handouts with various case studies and must decide whether they constitute harassment.

**See Appendix I for case studies and discussion points**

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### Victimisation

##### Slide 31-32

###### Exercise 8: Victimisation

**Question 1:** What do we mean by “victimisation”?

* Victimisation is essentially doing anything to treat someone badly because they have attempted or may attempt to access their rights under the Equality Act or assist someone else in accessing their rights. These attempts are generally known as “protected acts”.

### The Public Sector Equality Duty

##### Slide 33

* As Citizens Advice articulate, the Public Sector Equality Duty is: “a duty on public authorities to consider or think about how their policies or decisions affect people who are protected under the Equality Act.”[[9]](#footnote-9)
* As well as eliminating discrimination, harassment and victimisation, under s.149 of the Equality Act, public bodies and organisations that serve public functions must have due regard of the need to:
	+ Advance equality of opportunity between people who share a protected characteristic and those who do not.
	+ Foster good relations between people who share a protected characteristic and those who do not.
* In relation to having due regard for advancing equality, the Equality Act explains that it involves:
	+ Removing or minimising disadvantages suffered by people due to their protected characteristics.
	+ Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
	+ Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
* *For example, if a service is aware that few people from a certain protected characteristic (such as BAME women for example) are using their service, they may decide to do research to explore the potential barriers to their inclusion. Once they have carried out this research, they may decide to make changes to the way in which they operate or advertise in order to make their services more accessible to this group.*
* Likewise, it is not uncommon for universities to offer bursaries to individuals from certain groups in order to attract them to subjects from which they have traditionally been excluded.
* The Equality and Human Rights Commission says: “the broad purpose of the general equality duty is to integrate consideration of equality and good relations into the day-to-day business of public authorities.”[[10]](#footnote-10)

##### General steps to take in workplace discrimination

##### Slide 33

* General steps in workplace discrimination:
	+ Gather evidence as soon as possible.
		- This may include written correspondence and notes of instances that have taken place with times, dates, details, and witnesses.
		- You may also wish to write to the other side to ask for their evidence (for example, a breakdown of the company’s workforce in terms of gender). Obviously, if you choose to do this, they will be aware that you are in the process of making a complaint, so it may be advisable to wait until you are sure as to the approach you wish to take.
		- You can also ask them questions, such as why a policy/decision was made. This will allow an examination as to whether there was discrimination involved.
		- You can also ask for information from your employer under a “subject access request” under section 45 of the Data Protection Act 2018. This includes asking for things such as your HR file. You can find more information on your right of access through the Information Commissioner’s Office (ICO) <https://ico.org.uk/your-data-matters/your-right-to-get-copies-of-your-data/>
		- Alternatively, if you are dealing with a public body, you may wish to submit a Freedom of Information Act Request (FOI). You can find out how to make an FOI request at the Government website: <https://www.gov.uk/make-a-freedom-of-information-request/how-to-make-an-foi-request>
	+ It is usually better to attempt to informally solve the problem in the first instance depending on the situation (particularly in case of workplace grievances where you wish to continue working with the employer). You can do this by speaking or writing to the employer/ organisation involved.
	+ Make a formal complaint in writing.
		- In cases of employment discrimination, check your employee handbook or HR for any deadlines for raising a grievance. Things that you can ask for include:
			* An apology,
			* Taking steps to tackle the discrimination, including sanctioning an individual or reversing a policy,
			* Making efforts to raise awareness,
			* Reviewing a decision that has been made,
			* Financial compensation, including for any emotional or mental impact.
	+ Negotiate to reach an agreement.
		- You should always attempt this before legal action as you are not guaranteed to be successful in any action taken. However, you can continue to negotiate after legal action has been initiated.
	+ Use mediation.
		- Some companies might have in-house mediators, or you may have to ask that they pay for external mediators.
	+ Legal action, for example through an employment tribunal.
* You should make sure that you are aware of deadlines as they are usually very strict. For example, in terms of workplace discrimination, you have three months minus one day to contact ACAS are from the date of experiencing the discrimination (this is “early conciliation”). It is always better to seek advice early.
* If you do not complain about discrimination or harassment immediately, you may be asked to justify why you waited.
* It is always better to go through the aforementioned steps before attempting legal action.
* You can only go to an employment tribunal if you have contacted ACAS through early conciliation. It may be worth thinking about what you want to achieve and continuing to negotiate with your employer as an employment tribunal is only capable of achieving specific outcomes, such as:
	+ Financial compensation.
	+ Recommend actions from your employer (for example, a change in policy or giving you a reference), however, they cannot force your employer to comply.
	+ Making a statement saying that your employer has discriminated against you and outlining how the law has been broken.
* In any employment tribunal or legal action, you may wish to instruct a solicitor, or you may wish to represent yourself. You should be prepared for the fact that legal remedy can be a lengthy process and may be very stressful, particularly in terms of emotional and financial impacts. You can find information about free and affordable legal support through Citizens Advice (<https://www.citizensadvice.org.uk/law-and-courts/legal-system/finding-free-or-affordable-legal-help/>).

### Reporting breaches of the Equality Act

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* This section is not intended to cover every situation that you may find yourself in, but aims to provide you with a rough guide regarding the general processes of resolving a case of discrimination.
* Get advice from the Equality Advisory and Support Service (EASS) <https://www.equalityadvisoryservice.com/>. This is a service that was implemented to replace the Equality and Human Rights Commission helpline. They are independent of the EHRC and can be used if you need more help than can be provided by advice agencies and other local organisations (0808 800 0082)
* Think about which of the protected characteristics are relevant to your case. Full definitions of each of the characteristics can be found at <https://www.equalityhumanrights.com/en/equality-act/know-your-rights>
* Think about where the breach occurred and whether the situation is covered by the Equality Act. There may be exceptions in certain situations, so make sure that you seek advice from the EASS.
* Think about whether the breach can be classified as direct discrimination, indirect discrimination, harassment, or victimisation.
* Every case is different and it is always best to speak to an advisor as your first step as they can provide guidance and help you build a stronger case.
* Visit Citizens’ Advice at <https://www.citizensadvice.org.uk/>
* If you are experiencing discrimination or harassment in your workplace:
* Visit ACAS at <https://www.acas.org.uk/>
	+ - Advisory, Conciliation, and Arbitration Service
		- The Government describes ACAS and its work in the following way: “ACAS provides free and confidential advice to employers, employees and their representatives on employment rights, best practice and policies, and resolving workplace conflict.”[[11]](#footnote-11)
* Contact your union representative if you have one.
* Third party organisations may also provide support services for specific protected characteristics. For example, MEND’s Islamophobia Response Unit (IRU) provides legal and emotional support to clients in cases of Islamophobic discrimination and harassment.

# Appendix I: Module I Additional Materials

## Exercise 1: Direct Discrimination, Indirect Discrimination, or Objective Justification?

**Case 1:** Amira is 55 and is applying to be a postal delivery worker. During the interview process, the interviewer asks her about whether she has a history of heart related issues.

**Case 1 discussion:** This would be discrimination on the basis of disability. Except in very restricted circumstances, employers are not allowed to ask any job applicant about their health, previous sick leave, or any disability until the person has either been offered a job (conditionally or unconditionally) or they have been included in a group of successful candidates to be offered a job when a position becomes available. Employers can, however, make a conditional offer on the basis of a health check.

In this instance, when hiring Amira, the employer could make the offer conditional upon a health check as the role requires a great deal of strenuous daily activity. This is so that employers cannot use health issues (which may not affect an individual’s ability to perform the role) as a reason to exclude them from consideration. For example, Amira may have had heart related issues in her early teens that has no impact on her ability to do the job now. Exceptions to this include:

* Asking if accommodations need to be made to allow applicants to attend or participate in the application process and assessments.
* If there are certain occupational requirements (for example someone with experience of deafness as a support worker for someone who also suffers from deafness).
* It is a fundamental requirement of the role (for example, a tour guide being able to climb a large spiral staircase of a listed building). Even in this case, an employer should be asking only about your ability to do the job with reasonable accommodations in place.

**Case 2:** A nineteen-year-old man is refused an interview to become a driving instructor because of his age.

**Case 2 discussion:** This would be objective justification as there is an overriding law in place that stipulates that driving instructors must be over the age of 21.

**Case 3:** An estate agent refuses to rent a house to a Sikh man because he thinks he is a Muslim. He also does not rent to South Asians because of the "curry smell". Th agent said a property he had bought from an Indian couple cost him about £12,000 because the curry smell became a "massive problem" so he enforced this policy to prevent further financial risks.

**Case 3 discussion:** The Equality and Human Rights Commission (EHRC), which brought the action, said his remarks were unlawful. This amounts to direct discrimination as he has denied potential tenants of a home on the grounds of race or colour.

## Exercise 2: Harassment

**Case 1:** A pupil from an Irish Traveller background overhears a teacher on a number of occasions making racial slurs about gypsies and travellers stating their site should be shut down and they were ‘trouble’

**Case 1 discussion:** This would likely amount to harassment related to the protected characteristic of race.

**Case 2:** Colleagues of the only Muslim member of staff at a company put up posters supporting a Tommy Robinson rally

**Case 2 discussion:** Putting up posters in this manner, knowing they would make Muslims uncomfortable would likely amount to workplace harassment. If the person can show the effect of the conduct was that it created an environment which intimidated them.

**Case 3:** A male nurse faces taunts for having what is perceived as a woman’s job

**Case 3 discussion:** This looks like a case of discriminatory behaviour towards a person based on their gender, revolving around negative gender stereotypes about what men or women should do, and so is likely to amount to gender-based harassment.

1. "What Is The Equality Act? | Equality And Human Rights Commission". 2020. *Equalityhumanrights.Com*. Accessed March 23. <https://www.equalityhumanrights.com/en/equality-act-2010/what-equality-act>. [↑](#footnote-ref-1)
2. "Words And Terms Used In The Equality Act | Equality And Human Rights Commission". 2020. *Equalityhumanrights.Com*. Accessed March 23. <https://www.equalityhumanrights.com/en/advice-and-guidance/commonly-used-terms-equal-rights#objective>. [↑](#footnote-ref-2)
3. "Justifying Discrimination". 2020. *Citizensadvice.Org.Uk*. Accessed April 6. <https://www.citizensadvice.org.uk/law-and-courts/discrimination/what-are-the-different-types-of-discrimination/justifying-discrimination/>. [↑](#footnote-ref-3)
4. "Words And Terms Used In The Equality Act | Equality And Human Rights Commission". 2020. *Equalityhumanrights.Com*. Accessed March 23. <https://www.equalityhumanrights.com/en/advice-and-guidance/commonly-used-terms-equal-rights#objective>. [↑](#footnote-ref-4)
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6. "Words And Terms Used In The Equality Act | Equality And Human Rights Commission". 2020. *Equalityhumanrights.Com*. Accessed March 23. <https://www.equalityhumanrights.com/en/advice-and-guidance/commonly-used-terms-equal-rights#objective>. [↑](#footnote-ref-6)
7. "What Is Harassment And Victimisation? | Equality And Human Rights Commission". 2020. *Equalityhumanrights.Com*. <https://www.equalityhumanrights.com/en/advice-and-guidance/what-harassment-and-victimisation>. [↑](#footnote-ref-7)
8. Ibid [↑](#footnote-ref-8)
9. "What's The Public Sector Equality Duty?". 2020. *Citizensadvice.Org.Uk*. Accessed April 6. <https://www.citizensadvice.org.uk/law-and-courts/discrimination/public-sector-equality-duty/what-s-the-public-sector-equality-duty/>. [↑](#footnote-ref-9)
10. "The Essential Guide To The Public Sector Equality Duty". 2014. *Equality And Human Rights Commission*. <https://www.equalityhumanrights.com/sites/default/files/psed_essential_guide_-_guidance_for_english_public_bodies.pdf>. [↑](#footnote-ref-10)
11. "Pay And Work Rights Helpline And Complaints". *GOV.UK*. Accessed April 6. <https://www.gov.uk/pay-and-work-rights>. [↑](#footnote-ref-11)