

UK Equality Act 2010



Using this factsheet

| | |
|--|---|
| Key | 1 |
| Am I better protected through Disability Law or Human Rights protections? | 2 |
| Must people with disfigurements identify as 'disabled' to access protections under the UK Equality Act 2010? | 3 |
| Does the UK Equality Act 2010 protect citizens with disfigurements? | 4 |
| Where does a person in the UK go to register a complaint as a citizen if they face discrimination by a government service or facility? | 4 |
| Does the UK Equality Act 2010 protect customers with disfigurements? | 5 |
| Where does a person in the UK go to register a complaint as a customer? | 5 |
| Does the UK Equality Act 2010 protect job applicants with disfigurements? | 6 |
| Does the UK Equality Act 2010 protect employees with disfigurements? | 6 |
| Where does a person in the UK go to register a complaint as an employee? | 7 |
| Can I sue an individual for discriminating against me in the UK? | 7 |
| What are the three biggest gaps in the protection offered by the UK Equality Act to those with disfigurements? | 8 |



Key

Discrimination – treating a person or a particular group of people differently, especially in a worse way from the way in which you treat other people due to their disfigurement

Disability – a physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on your ability to do normal daily activities, therefore, the more severe a disability is the more likely that it will be recognized under the UK Equality Act

Legislation – a law, or set of laws

Impairment – a symptom or condition (which may be temporary or permanent) which makes it harder for an individual to complete tasks in a usual manner or timeframe

Ombudsman – someone who works for a government or large organization, dealing with complaints made against it

Disfigurement – a physical change, for example a scar, which alters a person’s appearance

Inhuman or Degrading treatment – treatment of a human being/s by another human being/s which results in intense physical or mental suffering

Public Authority – a body or organisation performing a public function

Private organization – business owned by individuals

Severe disfigurement – an impairment which has a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities

Normal day-to-day activities – activities considered normal for an individual to conduct inside and outside of work. This is judged by what is normal for people generally, not by what is normal for a particular individual

Am I better protected through Disability Law or Human Rights protections?

Disability Law - The UK Equality Act 2010

The UK Equality Act 2010 "**the UK Equality Act**" offers more direct protection than human rights legislation. Provided that an individual meets the definition of disability under the UK Equality Act, they will benefit from protections afforded by the UK Equality Act against direct and indirect discrimination or harassment in a broad range of scenarios.

Human Rights Legislation - The Human Rights Act 1998

The Human Rights Act 1998 "**the Human Rights Act**" can be more limited in its application. Protection against discrimination under the Human Rights Act is not 'free-standing'- the Act (which incorporates the European Convention on Human Rights) prevents public authorities from acting in a manner which is incompatible with the Convention and requires the courts, where possible, to interpret legislation in a way which is compatible with the Convention. .

The most relevant right under the Human Rights Act is likely to be Article 14, which protects individuals from discrimination. However, Article 14 is not a stand-alone right and is only applicable when another protected right under the Human Rights Act is in play. For example, to rely on Article 14, an individual would need to demonstrate that they have been subject to inhuman or degrading treatment under Article 3, in addition to the discrimination they have suffered under Article 14.

The usefulness of the Human Rights Act is limited further by the fact that the Act is only directly applicable to the actions of, and services provided by public authorities or private organisations or charities that conduct public functions (see Section 6 of the Human Rights Act).



Must people with disfigurements **identify as 'disabled'** to access protections under the UK Equality Act 2010?

No.

Persons with facial disfigurements generally need to meet the definition of 'disability' under the UK Equality Act in order to claim protections and exercise their rights under the UK Equality Act.

'Severe disfigurement' (with the exception, for example of unremoved tattoos and piercings), is deemed to be a 'disability' for the purposes of the UK Equality Act. Therefore, for the purposes of these FAQs, references to disability can be interpreted as including severe disfigurement.

If an individual cannot demonstrate a disability under the requirements of the UK Equality Act, the UK Equality Act does provide protection for non-disabled people who are subjected to direct discrimination or harassment because they are wrongly perceived to be disabled. This may provide those with facial disfigurements that do not meet all the criteria with some level of protection.



Does the UK Equality Act 2010 protect citizens with disfigurements?

Yes, in the case of severe disfigurements.

In addition, the UK Equality Act includes a general public sector equality duty, which applies to public authorities exercising public functions. This requires public authorities to have 'due regard' to eliminating conduct prohibited by the UK Equality Act, advancing equal opportunities and fostering good relationships between those with and without disabilities.

There are several exemptions - these obligations do not apply to e.g. the Security Service, Secret Intelligence Service and Government Communications Headquarters.

Where does a person in the UK go to register a complaint as a citizen if they face discrimination by a government service or facility?

When making a complaint regarding discrimination by a public authority, the same procedure set out in the customer complaints section below should be followed (i.e. the informal complaints procedure, followed by the formal complaints procedure).

If you have adopted informal and formal methods to complain to a public authority and your problem hasn't been resolved, you may be able to contact an ombudsman who can investigate your complaint. There are different ombudsmen depending upon where you live and the organisation you are complaining about – information on these ombudsmen can be found on the ombudsman association website <https://www.legalombudsman.org.uk/>

You may also be able to make a complaint to the Equality and Human Rights Commission "the EHRC". The EHRC will only take on individual cases if they consider it is in the wider public interest.

Does the UK Equality Act 2010 protect customers with disfigurements?

Yes, in the case of severe disfigurements.

The UK Equality Act imposes an obligation on any organisation that provides services to the public in the private, public or voluntary sectors.

Service providers are prevented by the UK Equality Act from discriminating against a person on the basis of their disability by not providing a service, providing a less favourable service than that given to other people, or by terminating a service.

Service providers are also prevented from subjecting a person to detriment. Detriment means a disadvantage of some kind. Examples may include: excessive disciplinary action, failure to investigate complaints of discrimination, failing to prevent others from discriminating, or imposing additional terms or conditions in a contract for goods or services due to a disability.

A service provider will also be liable for unlawful acts committed by their employees and agents (other than for criminal offences) unless they have taken reasonable steps to prevent such acts being committed.

Where does a person in the UK go to register a complaint as a customer?

Citizens Advice recommend making an informal complaint in the first instance. Informal complaints should be made by contacting the service provider as soon as possible.

More information can be found on the Citizens Advice website

<https://www.citizensadvice.org.uk/consumer/discrimination-in-the-provision-of-goods-and-services/discrimination-in-the-provision-of-goods-and-services1/goods-and-services-what-are-the-different-types-of-discrimination/provision-of-goods-and-services-discrimination-because-of-something-connected-to-your-disability/>

It is helpful when making a complaint to include a description of the service, names and job titles of the people involved, a short description of the events including the date and time, the impact the incident had on you, how you would like the situation to be rectified and when you expect to receive a reply.

If your informal complaint is unsuccessful, a formal complaint can be made. Start by asking the service provider for their complaints policy. Include the information above with your name and contact details in a written complaint. The Equality Advisory Support Service provides template letters to make such a complaint

<https://www.equalityadvisoryservice.com/app/answers/list/search/1/kw/template%20letter%20work/suggested/1>



Does the UK Equality Act 2010 protect **job applicants with disfigurements**?

Yes, in the case of severe disfigurements .

The UK Equality Act protects against direct discrimination where individuals are treated less favourably due to their disability - this applies to both applicants and existing employees e.g. this may arise where an employer rejects a job applicant for a customer-facing role where, or because, the job applicant has a severe facial disfigurement.

The UK Equality Act also prohibits employers from questioning applicants about their health, except for certain reasons e.g. to ascertain whether any adjustments are required for an assessment process or to check if an individual is able to fulfil the requirements of a role.

Does the UK Equality Act 2010 protect **employees with disfigurements**?

Yes, in the case of severe disfigurements.

Employees including apprentices, UK employee shareholders, UK workers and self-employed individuals under a contract requiring them to perform work personally are protected under the UK Equality Act.

Employees are protected against direct discrimination, where an individual is treated less favourably due to their disability, and indirect discrimination where an employee has a policy, practice or way of working which adversely impacts a disabled person. An employer does not need to know about a disability in order to indirectly discriminate.

Where does a person in the UK go to register a complaint as an employee?



When making a complaint against your employer, an informal complaints procedure can also be adopted. This may be preferable in the first instance if:

You need a swift outcome

The discrimination is not having a huge impact at present

Make the informal complaint to somebody at work who you think can help. You may have an employee policy that tells you who to complain to. Make sure you are clear on what you want to say, have any evidence with you, and take notes of any meetings.

If an informal complaint is not successful, you can raise a formal grievance. More information including a draft letter template can be found on the Citizens Advice Website

<https://www.citizensadvice.org.uk/work/discrimination-at-work/checking-if-its-discrimination/check-if-your-problem-at-work-is-discrimination/>.

Can I sue an individual for discriminating against me in the UK?

Under the UK Equality Act, unfair treatment is only deemed to be unlawful discrimination if it is carried out by certain groups including:

- service providers e.g. shops, banks or energy providers
- healthcare and education providers
- transport providers e.g. buses, trains or taxis
- government departments or local authorities
- someone letting or selling a property e.g. private landlord or housing association

An individual can only be sued for discrimination under the UK Equality Act if they fall within one of these groups. However, the conduct of the individual may also be a criminal offence, depending upon severity.





What are the **three biggest gaps** in the **protection** offered by the UK Equality Act to those with disfigurements?

Gap 1

Whilst those with severe disfigurements are protected under the UK Equality Act, no definition or explanation for what is considered a 'severe disfigurement' is provided and there is limited case law in this area. This lack of clarity may make it harder for someone to prove that they should be treated as having a 'severe disfigurement' and afforded the associated protections.

Gap 2

The UK Equality Act does not protect pure differences of appearance (without a physical impairment) even where these differences create disadvantages. Instead an individual must prove that they have a severe disfigurement to benefit from protections.

Many people with a 'visible difference' will not be classified as 'disabled' under the Act if it is not a "severe disfigurement", because such disfigurements may not have any adverse effect on the person's ability to carry out day-to-day activities. However, people with visible differences may still face social and professional barriers and discrimination, resulting in psychological suffering and other hardships such as poverty.

Gap 3

The Act does not address more subtle types of discrimination, such as colleagues making assumptions about the ability or intellectual capacity of people with disfigurements, or facing general unpleasantness from strangers, such as being stared at or being the subject of unwanted comments.

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