

Face Equality International (FEI) Research Project

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United Kingdom

| No. | Question | | Answer |
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| 1. | <p>a. Do people with facial disfigurements (marks, scars, etc.) have any legal protection against discrimination?</p> <p>b. Which law relates or mentions the legal protections?</p> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <p>Yes. There is legal protection enshrined in UK law.</p> <p>The UK Equality Act 2010 (“UK Equality Act”) safeguards individuals in the UK against discrimination, harassment, and victimisation based on nine “protected” characteristics, including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.</p> <p>Appearance alone is not a protected characteristic under UK law, however, a “severe disfigurement” is deemed to meet the definition of a disability for purposes of the UK Equality Act.</p> <p>Legal protections under the UK Equality Act apply to various aspects of life, such as the workplace, public services, clubs, businesses, services, and transportation.</p> <p><u>Legal protection under the UK Equality Act</u></p> <p>The UK Equality Act prohibits discrimination against people with a disability across a range of activities including the provision of goods, facilities and services; the exercise of public functions, premises, work, education, and associations.</p> <p>There are four “main” types of prohibited conduct which include: Direct Discrimination, Indirect Discrimination, Harassment and Victimisation.</p> <ul style="list-style-type: none"> • Direct discrimination means a person (A) treats the disabled person (B) less favourably than A treats or would treat others (section 13 of the UK Equality Act); • Indirect Discrimination means A applies to B a provision, criterion or practice which is discriminatory in relation to B’s disability, but fails to show it to be a proportionate means of achieving a legitimate aim (section 19 of the UK Equality Act); |

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| | | <ul style="list-style-type: none"> • Harassment means A engages in unwanted conduct related to disability that violates B's dignity, or creates an intimidating, hostile, degrading, humiliating or offensive environment for B (section 26 of the UK Equality Act); and • Victimisation means A subjects B to a detriment because B does a protected act (e.g. bringing proceedings under the UK Equality Act) (section 27 of the UK Equality Act). <p>In addition to the above four types of prohibited conduct, the UK Equality Act imposes a duty to make reasonable adjustments for a disabled person, for example where:</p> <ul style="list-style-type: none"> • a provision, criterion or practice • a physical feature of premises, or • the lack of an auxiliary aid <p>places a disabled person at a substantial disadvantage compared with people who are not disabled (sections 20-22 of the UK Equality Act).</p> <p>The UK Equality Act also protects people from discrimination <i>arising from</i> disability (section 15 of the UK Equality Act). For example, A discriminates against B if A treats B unfavourably because of something arising in consequence of B's disability (e.g. needing time off for medical appointments). This does not apply if A shows that they did not know, and could not reasonably have been expected to know, that B had the disability.</p> <p>According to the Guidance, the UK Equality Act does provide protection for non-disabled people who are subjected to direct discrimination or harassment because of their association with a disabled person or because they are wrongly perceived to be disabled. This may provide some level of protection to individuals with facial disfigurements/differences that who cannot demonstrate a disability under the requirements of the UK Equality Act. .</p> <p>Human Rights legislation</p> <p>The Human Rights Act 1998 ("Human Rights Act"), which incorporates the rights set out in the European Convention on Human Rights (ECHR) into domestic British law, requires that public bodies (like the courts, police, local authorities, hospitals and publicly funded schools) respect and protect human rights.</p> <p>The Human Rights Act protects individuals from discrimination in the enjoyment of human rights set out in the ECHR (Article 14). The protection, however, is not 'free-standing'. To rely on this right, a person must show that discrimination has affected their enjoyment of one or more of the other rights in the Human Rights Act, such as the right to freedom from torture and inhuman and degrading treatment (Article 3).</p> |
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| | | | <p>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.</p> <p>United Nations Convention on the Rights of Persons with Disabilities</p> <p>The UK has agreed to follow the United Nations Convention on the Rights of Persons with Disabilities (UN CPRD) to protect and promote the human rights of disabled people.</p> <p>Full text of the UK Equality Act in English: https://www.legislation.gov.uk/ukpga/2010/15/contents</p> |
| 2. | <p>a. What is this country's legal definition of disability?</p> <p>b. When do people with a facial disfigurement fit within that definition?</p> <p>c. How does being excluded from that definition affect the protection of their rights?</p> | <input type="checkbox"/> Yes <input type="checkbox"/> No | <p>a) <u>Definition of disability under UK Equality Act</u></p> <p>Under Section 6(1) of the UK Equality Act a person has a “disability” if they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. The definition of disability for the purposes of the UK Equality Act is a legal definition and it is only adjudicating bodies, i.e. a court and a tribunal, which can determine whether a person meets that definition.</p> <p>b) <u>Whether people with facial disfigurements fall within the definition</u></p> <p>Whether a person is disabled for the purposes of the UK Equality Act is generally determined by reference to the “effect” that an impairment has on that person’s ability to carry out normal day-to-day activities. A “severe disfigurement” is deemed to be a disability for purposes of the UK Equality Act.</p> <p>The UK Equality Act does not define the term “disfigurement”. In 2011, the UK Government published Guidance on matters to be taken into account in determining questions relating to the definition of disability (“Guidance”), which includes examples of disfigurements which may be considered to fall within the definition of a disability.</p> <p>This includes scars, birthmarks, limb or postural deformation (including restricted bodily development), or diseases of the skin. Assessing severity will be mainly a matter of the degree of the disfigurement, which may involve taking into account factors such as the nature, size, and prominence of the disfigurement. However, it may also be necessary to take account of where the disfigurement is on the body (e.g. if such disfigurement is on the back or on the face). Disfigurements</p> |

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| | | | <p>which consist of tattoos (unremoved) and markings/piercings for decorative purposes are not severe disfigurements. (B-25-26 of the Guidance). Note that the Guidance does not impose any legal obligations in itself, but gives illustrative examples as an explanation of how the definition operates to a range of people and organisations.</p> <p>There is no requirement under UK laws for an individual to obtain a certificate that they have a disability, but if an individual needs evidence to show they have a disability (for example where challenged by an employer), this can be obtained from a doctor or medical professional. Citizens Advice also suggests that individuals keep a diary to record what they do and what they find difficult, and why. This may help to make clearer how an impairment affects an individual's normal day-to-day activities.</p> <p>Citizens Advice: https://www.citizensadvice.org.uk/work/discrimination-at-work/discrimination-at-work/checking-if-its-discrimination/check-if-youre-disabled-under-the-equality-act-work/</p> <p>c) <u>How does being excluded from that definition affect the protection of their rights?</u></p> <p>As discussed above, persons with facial disfigurements generally need to meet the definition of “disability” under the UK Equality Act to avail themselves of its protections.</p> <p>A person with a ‘visible difference’ which is not regarded as a “severe disfigurement” may not be deemed “disabled” under the UK Equality Act, because such disfigurements may be deemed not to have any adverse effect on the person’s ability to carry out day-to-day activities.</p> <p><i>Guidance on matters to be taken into account in determining questions relating to the definition of disability:</i> https://www.gov.uk/government/publications/equality-act-guidance/disability-equality-act-2010-guidance-on-matters-to-be-taken-into-account-in-determining-questions-relating-to-the-definition-of-disability-html</p> <p><i>Equality Act 2010 (Disability) Regulations 2010 (S.I. 2010/2128):</i> https://www.legislation.gov.uk/uksi/2010/2128/contents/made</p> |
| 3. | Are there aspects of disability and/or disfigurement law that ensure a legal right to | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <p>The UK Equality Act prohibits discrimination against people with a disability across a range of activities including the provision of goods, facilities and services; the exercise of public functions, premises, work, education, and associations.</p> |

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| | <p>healthcare, education or employment?</p> | <p>In addition, the UK Equality Act includes a general public sector equality duty, which applies to public authorities exercising public functions. This requires many 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.</p> <p>Helpful advice, and template letters, are available from Citizens Advice when bringing complaints against a service provider or employer. Citizens Advice advise making an informal complaint in the first instance, which can be followed up with a formal complaint if the matter is not resolved.</p> <p>Complaints against public and private sector organisations may also be made to an ombudsman who can investigate a complaint. There are different ombudsmen depending upon location and the organisation the complaint is about– information on these ombudsmen can be found on the ombudsman association website https://www.legalombudsman.org.uk/</p> <p>Complaints may also be made 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.</p> <p>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/</p> |
| 4. | <p>a. How effective are the legal protections? Please describe evidence available of the effect of the legal protections.</p> <p>b. What are deficiencies or areas for improvement in these legal protection measures as they apply and affect people</p> | <p><u>a) Effectiveness of the legal protection</u></p> <p>There have been discrimination cases brought under the UK Equality Act which suggest that the protections for persons who have a protected characteristic are effective, if pursued. For example, in <i>FirstGroup Plc v Pauley</i> [2017] UKSC 4, the Supreme Court highlighted that the duty to make reasonable adjustments is a prospective duty owed to disabled persons generally, to take proactive steps to meet their needs, and if an individual suffers as a result, then that failure amounts to discrimination against the individual.</p> <p>The case of <i>Clements v Guys and St Thomas' NHS Trust</i>, which considered discrimination on the basis of a candidate's age and sex, highlights how employers and prospective employers may be held to account for conscious and unconscious biases in the recruitment process. The decision process in that case was held to have been unfairly influenced because of a perception of the individual's protected characteristic. In the same case, the claim of failing to make a reasonable adjustment, however, did not succeed.</p> |

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| <p>with facial disfigurement?</p> <p>c. What evidence exists to prove that the information and resources guaranteed by law are actually available to disabled persons?</p> | <p><u>b) Deficiencies/Areas for Improvement</u></p> <p>The meaning of ‘disfigurement’ under UK law is uncertain. This is partly because the Guidance sets out a list of examples of types of disfigurement, rather than defining criteria. There have been relatively few reported cases which explore the concept of severe disfigurement.</p> <p>The qualifier of “severity” may also mean that individuals who have a disfigurement or difference which is not regarded as severe will not be protected under the UK Equality Act, even if they experience harassment and discrimination.</p> <p>As appearance alone is not a protected characteristic, individuals who are discriminated against because of conditions which are not severe disfigurements may need to look to other protected characteristics to avail of their rights (such as discrimination on the basis of age or sex). This approach may fill some gaps in available protections under UK legislation but can lead to some unfair results. As Hannah Saunders noted in connection with the case of Finn v British Bung Manufacturing Company Ltd, harassment as a result of male pattern baldness engages rights under the UK Equality Act (on the basis of age or sex), but harassment about alopecia areata may not.</p> <p>Because the Guidance takes into consideration the location of a person’s disfigurement in assessing its severity, this creates a gap in protection for people affected by disfigurements that are located other than on the face. It implies that disfigurements that are capable of being covered may not be regarded as severe for purposes of the legislation.</p> <p>In February 2024, the UK Government published the Disability Action Plan (“Plan”). The Plan sets out 32 actions to improve disabled people’s lives. The Plan summarises responses from a 2023 consultation, highlighting policy areas identified as needing attention. The UK Government’s work in this area may present opportunities to raise awareness of the experiences of individuals with facial differences and disfigurements (including ensuring that individuals with facial differences and disfigurements are considered in the UK Government’s further work).</p> <p><u>c) Evidences proving that the information and resources guaranteed by law are actually available to disabled persons</u></p> <p>Information about the experience of disabled people is not easily available, though charities, such as “Changing Faces” have published results of surveys which are insightful. In their 2010 written evidence to the House of Lords Select Committee on the Equality Act 2010 and Disability: Call for Evidence, Changing</p> |
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| | | <p>Faces noted that the lack of reported cases relating to disfigurement brought under the Equality Act 2010 is indicative of the fact that people with disfigurements who have experienced discrimination and/or harassment do not know how or where to bring cases forward or cannot be confident that they will succeed in gaining redress.</p> <p>The 2023 Great Big Workplace Adjustments Survey was published in June by the Business Disability Forum. It purports to reflect the experience of disabled employees, managers, and senior leaders of requesting, making, and reviewing adjustments for disabled employees. It is not clear to what extent the data covers individuals who have a disfigurement or visible difference.</p> <p>The 19 January 2023, the Office For National Statistics published its Information on disability in England and Wales from 2021 Census data. Although the data collected was intended to align with the definition of “disability”, it appears that the identification of a “disability” focused on conditions which impact on day-to-day activities. It appears that individuals with disfigurements may not be represented in this data.</p> <p>The UK Government has acknowledged in the Plan gaps in the quality, quantity and coverage of UK data on disability. The Plan incorporates actions to improve government disability data, address gaps in evidence and work on indicators to measure how effective policies and services are (Actions 22 to 25).</p> <p>In 2016 the UK was investigated under the Optional Protocol of the UN CRPD following a formal request from several disability organisations. The UN Committee on the Rights of Persons with Disabilities found that “grave or systematic violations” of disabled persons’ rights had taken place because of welfare reforms (austerity measures) in the UK since 2010.</p> <p>Sources:</p> <p>Disability Action Plan - GOV.UK (www.gov.uk)</p> <p>National Disability Strategy: Forewords, about this strategy, action across the UK, executive summary, acknowledgements - GOV.UK (www.gov.uk)</p> <p>Disability, England and Wales - Office for National Statistics (ons.gov.uk)</p> <p>Committee on the Rights of Persons with Disabilities Holds Follow-Up Dialogue on Inquiry Report of the United Kingdom OHCHR</p> |
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