

## **Training Briefing on the Equalities Act 2010**

There are two main purposes of the Equality Act 2010 (the Act), namely:-

The first is to provide protection from unlawful discrimination and harassment on the basis of nine protected characteristics. It does not matter if there is no intention to discriminate, what is important is the effect of discrimination on the person or people involved.

The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Equalities law gives legal protection to people from discrimination in many areas including employment, accessing services (public, private, free or paid); public functions; education; housing and the running of associations or clubs.

The second purpose of equality law is to support and encourage progress towards achieving equality. If there are circumstances when groups of people who share a protected characteristic have experienced disadvantage, have specific unmet needs or are under-represented the Act allows organisations, such as charities, to take proportionate action to achieve equality for these groups. It does this by including in the Act:

- Exceptions to the general rules on non-discrimination
- Voluntary positive action provisions
- Placing a set of equality duties on public sector bodies to pay due regard to the need to advance equality of opportunity, eliminate discrimination and foster good relations

### **When discrimination may be allowed**

The Act, as well as prohibiting unlawful discrimination, recognises there are circumstances when there is a need to provide services to specific groups of people who may have specific needs or be disadvantaged in some way. It does this through the exceptions to the general rules on non-discrimination. There is a range of exceptions covering a variety of different circumstances

In considering whether an exception applies it is important to remember the presumption in the Act is that discrimination is unlawful, unless one of the exceptions apply.

## **The charity exception**

The Act, in sections 193 and 194, specifically recognises the value of charities providing specific services only to particular groups in response to a disadvantage or unmet need. The charity exception allows charities to restrict their services only to particular groups so long as the following conditions are met. First, any restriction must be specified within the Trust

Purposes and second it has either to prevent and or compensate for a disadvantage, or be a proportionate means of achieving a legitimate aim.

An example would be that NAVT's purposes are only for the benefit of the people of the Operating area and therefore it only assists those people. It would not be seen as discrimination that benefit is not given to others outwith the area as this is stipulated within the charitable purposes

The Equality duties very often occur in the area of employment which does not apply to NAVT as it does not employ anyone. The Trust will, however, have to ensure that its policy and spend do not inadvertently discriminate against any protected group that the aims of the organisations supported comply with equalities.

## **Positive action**

Any charity can take positive action if the purpose of doing so is to alleviate disadvantage, to reduce under-representation or to meet the particular needs of people who share a particular protected characteristic. The action that is taken must not be in breach of any of the discrimination provisions in the Act. The charity must also be able to show that the action meets a legitimate aim and is appropriate and necessary to achieve that aim.

Positive action can include a wide range of activities but it does not include positive discrimination, which is treating someone more favourably because of a protected characteristic.

Notwithstanding the above, in order to demonstrate that the decisions the Trust makes are not discriminatory the Trust will have to demonstrate that it has carried out equality screening and equality impact assessments when it makes decisions to assist.

In general terms the decision would require to be scrutinised to work out which groups of people would benefit, taking the protected characteristics into consideration, and whether this would have a positive or negative impact in terms of equalities. For the vast majority of decisions made by NAVT this will be straightforward and if the charity exception can be justified, the decision should be acceptable in terms of the Equalities Act.

Charities require to take care to ensure they act in accordance with equality law, as well as thinking about how they can use the positive provisions to further their charitable objects. The two main things that charities need to consider are:

- Firstly, equality law is about providing protection from less favourable treatment because of a protected characteristic and encouraging progress on equality. In doing so, equality law recognises that sometimes we need to treat people differently by providing specific services and taking positive action.
- Secondly, if a charity wants to take positive action or to rely on an exception to the general rule of non-discrimination they must be satisfied that they are doing this to meet a legitimate aim and that what they are doing is both necessary and appropriate to meet this aim.