

Is that fair?

How to recognise discrimination



Introduction

It's upsetting and humiliating to be singled out for worse treatment because of who you are – if your GP refuses to treat you because you're gay, for example, or you are made redundant from your job because you are pregnant. Treatment like this is called discrimination.

You have a right not to be discriminated against. It's completely unfair and, in many cases, against the law. If you think that you've been treated worse than others because of who you are, you've come to the right place. This guide will help you:

- ◆ understand what discrimination is
- ◆ recognise when someone might be discriminating against you
- ◆ work out what your rights are
- ◆ know where to get help.

This guide looks long, but don't be put off, you won't need to read it all at once. And we've colour-coded the sections to help you find your way around.

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What's discrimination?

What's discrimination?

Being treated worse than others because of who you are

Discrimination is where someone treats you worse than they treat other people because of who you are. For example:

A woman, who is being paid less than the men at the same level as her, is being treated worse by her employer than her male colleagues. See Emily's story.

A local shopkeeper who refuses to serve migrant workers is treating them worse than she treats other people who come into her shop. See Oskar's story.

Emily's story

When my manager found out that the charity I work for was having money troubles, she left. I applied for her old job and got it. I was really pleased until they told me that the figure they 'had in their head' for my new salary was £25,000. I knew for a fact that my old manager had been on at least £5,000 more. I realised that they were trying it on as a way of saving themselves some money. But I didn't see why I should be paid less than other people at the same level in the organisation as me. Most of these people were men. So I complained, explaining that I was concerned that they had decided to pay me less than a number of men at the same level. HR eventually increased my salary to £30,000.



Paying Emily less could amount to sex discrimination. Whilst her managers might have been able to justify their decision because of the organisation's financial difficulties, they clearly accepted that it was unfair.

Oskar's story

Two months' ago, I moved from Poland to East Anglia in the UK. I know some other people from my town who moved here also. I came to work as a farm labourer. There are many farms here that need people to pick crops like lettuces in spring and summer time. Some of the local people have been very welcoming to us. But some do not like us being here. There is only one shop in the village where I live but when I first moved here I could not go there. The woman who owns the shop refused to serve any Polish people. So whenever I needed to buy anything, I had to go into the town. But, my friend, he told me that this was against the law. So I went in and complained. Now I can go into the shop whenever I want. But I'd rather spend my money somewhere else.

Being harassed

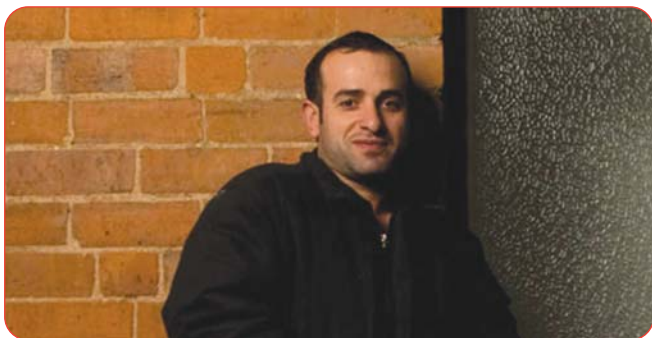
If someone is saying or doing things because of who you are that you find offensive, humiliating, frightening or distressing, that is also discrimination. It is called harassment.

An employee talks to his manager in confidence about the fact that he is going to have gender reassignment surgery. But the meeting wasn't as confidential as he expected it to be. Over the next few weeks he suffers endless taunts and nasty practical jokes from his colleagues – from being called a 'lady boy' to finding bras and tampons hung up around his desk.

Your employer must take reasonable steps to protect you from harassment in the workplace – not only from work colleagues and managers but also from other people you come into contact with in the course of your work, such as customers.

Unnecessary rules and ways of doing things that put you at more of a disadvantage

Discrimination can be subtler than being treated worse than others or being harassed. Someone may have a rule or a way of doing things that they apply to everyone in the same way. But what if it puts you, and other people like you, at more of a disadvantage than others? Well, this could also be discrimination. It is called indirect discrimination.



Some employers select staff for redundancy on the basis that the last one in should be the first one out. This could be indirect age discrimination because younger employees are likely to have been recruited more recently than older members of staff.

It also used to be common for insurance companies to require customers to declare whether they'd had an HIV test and refuse to sell policies to those who had. This could be indirect sexual orientation discrimination because it is arguable that gay men are more likely to have been tested than straight men.

Behaviour like this won't always be discrimination, though. Provided the purpose of the rule or way of doing things isn't to discriminate against you, they might be able to justify their behaviour as a necessary means to an end.

Being punished for complaining about discrimination

If you are treated less favourably for complaining about being discriminated against or helping someone else to complain about being discriminated against, that is also against the law. It is called victimisation.

What's discrimination?

Duty to make reasonable adjustments for disabled people

If you're disabled, there's another way you might be discriminated against. Someone might have a rule or ways of doing things that puts you at a substantial disadvantage compared with people who are not disabled. Or you might have difficulty getting in or around their premises compared with people who are not disabled. If they don't take reasonable steps to prevent or reduce that disadvantage, that is discrimination. For example:

An employer wants to carry out telephone interviews with the job applicants he has selected. One of them is deaf. The deaf man asks to have a face-to-face interview instead.

The only access to the toilets at a local pub is through a doorway that it is too narrow for a disabled customer in a wheelchair to get through. He points this out to the pub landlord and asks him to see if he can widen the doorway.

How do I know it's happening to me?

Sometimes it's completely obvious that someone is discriminating against you – like in the harassment example on page 2. But at other times discrimination can be harder to pinpoint. For example:

How do I know it's happening to me?

A man with a severe disfigurement sees a flat he's interested in and books a viewing over phone. When he arrives for the viewing the landlord seems flustered and apologises to him, saying he has just let the flat out to the previous viewer. The disabled man asks instead to view one of the other flats the landlord is advertising in the same building. The landlord suggests that they are much more expensive so probably out of his price range. When he asks to view them anyway, the landlord explains that he'll have to make another appointment as he hasn't brought the keys with him. When he gets home, the disabled man checks the newspaper again and sees that all three flats are being advertised at the same price. Feeling like he's been spun a line, he asks his mate to ring up a few days later and try and book a viewing for the original flat. Miraculously, the flat seems to be back on the market.

Does something that's happened to you not seem to add up? Do you have your suspicions that you've been discriminated against but don't feel sure? Well, there are a number of things that you can do to get things clearer in your mind:

- ◆ talk through what's happened with someone you trust like a friend, family member, or colleague at work to get their take on the situation
- ◆ even better, talk to an adviser who can deal with discrimination issues at your local advice agency or one of the other specialist organisations mentioned on page 12. They'll have heard many other people's stories before and be able to spot the telltale signs
- ◆ anti-discrimination laws allow you to send a questionnaire to an employer, shop or service provider you think has discriminated against you so you can gather more information. You'll be able to use their reply (or lack of it!) as evidence if you end up bringing a claim in a court or employment tribunal (in Northern Ireland, an industrial tribunal).

See our other guide, 'You don't have to put up with it' for more details on how to make a complaint about discrimination.

What's discrimination?

- ◆ Being treated worse than others because of who you are
- ◆ Being harassed because of who you are
- ◆ Being subject to unnecessary rules and ways of doing things that put you, and people like you, at more of a disadvantage
- ◆ Being punished for complaining about discrimination
- ◆ Failing to make a reasonable adjustment for someone with a disability

What's NOT discrimination?

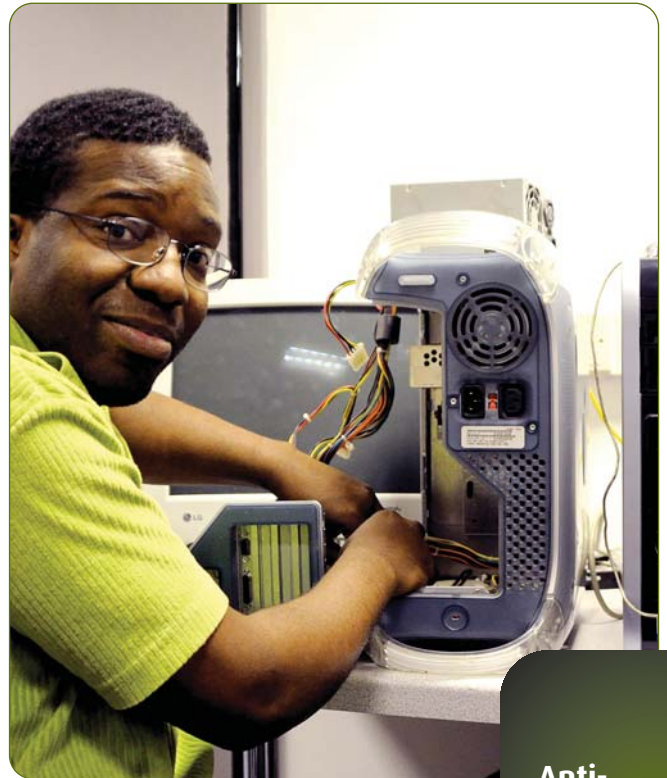
It's not discrimination for an employer to look at your skills, knowledge and experience when they decide whether or not to offer you a job or promotion, send you on training or decide on your terms and conditions of work (such as how much they're going to pay you). This isn't treating you worse because of who you are. This is treating you appropriately because of what you can do for them.

Anti-discrimination laws

There are specific anti-discrimination laws making it illegal for certain categories of people to discriminate against you for a number of different reasons. The different categories of people and the different reasons are listed on page 6.

But what if you're being discriminated against for a reason that isn't on the list? Because of your weight, for example, or because you have a regional accent? Or what if someone other than your employer or a shop or service provider is discriminating against you, like a neighbour or strangers in the street?

If the discrimination you are suffering from doesn't seem to be covered by the anti-discrimination laws, it doesn't mean there's nothing you can do to stop it. Depending on exactly what is happening to you, the person discriminating against you might be committing a criminal offence. Or they might be interfering with your employment rights, human rights or breaking the law in some other way. See page 10.



Anti-discrimination laws

If someone has broken the law by discriminating against you, this might mean that you can go to a court or employment tribunal (in Northern Ireland, an industrial tribunal or the fair employment tribunal) and get compensation. You're unlikely to get mega-bucks but it should go some way towards putting right what has happened to you.



Who is discriminating against you?

Anti-discrimination laws protect you from discrimination by:

Employers

...when you're applying for a job, to stop them offering you a job on less favourable terms and conditions (such as paying you less than they would other people), to make sure you get the same training, promotion and transfer opportunities as everyone else and so that they can't sack you just for being who you are

Education and training providers

...such as schools, colleges, universities and vocational training services

Public service providers

...such as GPs, hospitals, local authorities, job centres and prisons

People selling, letting or managing property

...such as a local authority housing departments (in Northern Ireland, the Housing Executive), housing associations and private landlords

Shops and other service providers

...such as pubs, restaurants, cinemas, banks and insurers

Anti-discrimination laws

Why do you think they are discriminating against you?

Anti-discrimination laws protect you from discrimination because:

- ◆ You are a man or a woman (your gender)
- ◆ You are pregnant
- ◆ You are transgender
- ◆ Of your race, colour, nationality, ethnic or national origins
- ◆ You are disabled
- ◆ You are lesbian, gay, bisexual or straight (your sexual orientation)
- ◆ Of your religion or belief or lack of religion

You are also protected from discrimination by your **employer** because:

- ◆ You are thought of as too young or too old (your age)
- ◆ You are taking or want to take statutory maternity leave
- ◆ You are married or in a civil partnership



In Northern Ireland, you are also protected from discrimination because of your political belief.

Discrimination by association

Most commonly, people are discriminated against because of their **own** race, sexual orientation or religious belief. But anti-discrimination laws actually make it illegal to discriminate against you because of race, sexual orientation or religious belief in general.

- ◆ This makes it illegal to discriminate against you because of the race, sexual orientation or religious belief of the people you associate with, such as your partner, friends and family. So if you are harassed at work after your colleagues find out that your parents are Jehovah's Witnesses or a landlord refuses to let a flat to you because you want to share it with your friend who is Iranian, you can take action against these people.
- ◆ It also makes it illegal to discriminate against you because of your own positive attitude towards people of other races, sexualities or religions. See Hannah's story.
- ◆ It also makes it illegal for someone to discriminate against you because they think you are a particular race or sexual orientation or religion even if you are not. So, it's illegal for a training provider to refuse to take your booking because, when they hear your surname, they think you are Jewish, whether you are or not.

Hannah's story



I used to waitress at a restaurant down the road from where I live.

On one of my shifts, I seated and served a lesbian couple. After they'd gone, my manager called me into the kitchen and told me not to serve anyone like that again. If they came in again, she said I should just tell them that the restaurant was full.

I didn't say anything at the time but I made up my mind that I wasn't going to treat anyone like that no matter what my manager said. So, when they did come in again on my shift I gave them a table like everyone else. And I got the sack.

This is discrimination and Hannah could have brought a claim against her employer.

Anti-discrimination laws

What's a disability?

Under the anti-discrimination laws a disability is a physical or mental impairment that makes it (or is likely to make it) difficult for you to carry out normal day-to-day activities for at least 12 months. It's a very wide definition covering far more illnesses, conditions and complaints than those that people would traditionally think of as disabilities. For example, it includes, amongst many other things, dyslexia, HIV, severe disfigurement, loss of a limb and clinical depression. You could be covered by the disability discrimination legislation even if you have never classed yourself as disabled.

You'll be covered by these laws even if you're having treatment which makes it possible for you to carry out normal day-to-day activities. But you won't be covered if you have treatment which cures you of the impairment.

Are you being discriminated against?

Have a look at each of the columns below. Is there an item you can circle in each column to describe how you have been treated? If so, you might be covered by the anti-discrimination laws.



Did you circle an item in each column? If so, you might have a discrimination case. Get in touch with one of the organisations listed in 'Where to get help' (page 12).

Gaps

Unfortunately there are some gaps in the protection given by the anti-discrimination laws. For example, it is not currently illegal for shops and service providers to discriminate against you because of your age. It's only illegal for employers to do this.

Some of these gaps might be filled by other laws (see 'Other rights' on page 10).



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In June 2008, the government announced that they'd be introducing a new Bill to update our anti-discrimination laws. If this becomes law, it will:

- ◆ **plug some of the current gaps by, for example, making it illegal not only for employers but also shops and service providers to discriminate against people because of their age**
- ◆ **attempt to close the pay gap between men and women by taking away the secrecy around what people are paid**
- ◆ **allow employers to discriminate in favour of groups who are traditionally discriminated against, like women and ethnic minorities, to make sure employers have a more balanced workforce**

Anti-discrimination laws

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What's not covered?

There are important exceptions to the anti-discrimination laws. For example, anti-discrimination laws do not stop you from setting up charities with the aim of helping a certain disadvantaged group. So a charity counselling Muslim women who have suffered from domestic violence would not be acting illegally if they didn't take clients with no religion.

There are also exceptions for religious organisations. Whatever you might think of this, the Catholic Church doesn't suddenly have to start recruiting women priests and, in some circumstances, religious organisations can still refuse to provide goods, services or use of their facilities to lesbian, gay and bisexual people.

Other rights

If the discrimination you are suffering from doesn't seem to be covered by the anti-discrimination laws, it doesn't mean there's nothing you can do to stop it. Depending on exactly what is happening to you, the person discriminating against you might be committing a criminal offence. Or they might be interfering with your employment rights, human rights or breaking the law in some other way.

Employment law

If someone is discriminating against you at work in a way that is not covered by the anti-discrimination laws, they could be interfering with your other employment rights. Your rights are set out in your contract, in your employer's policies and procedures and by the law. For example, a woman is being bullied by colleagues at work because she is overweight. When she tells her manager, she does nothing to put a stop to it. Feeling so unsupported, she eventually resigns. She gets advice from an employment law expert, who tells her she could make a claim against her employer for constructive dismissal (claim that she was as good as sacked because her employer treated her so badly, she had no alternative but to resign).

Other rights

Human rights

The Human Rights Act requires public service providers, such as GPs, job centres, social services, local authorities and prisons to respect people's human rights.

Human rights include things like the right to a family life, a fair trial and freedom from torture.

The Human Rights Act also gives you the right not be discriminated against. But this doesn't cover all situations: only those where you are trying to use one of your other human rights.

For example, one human right is the right to respect for private life. This includes the right to take part in local community life, for example, by doing voluntary work. So if a woman is told that she can't volunteer in a local school because she is transgender, that is discriminating against her in using her right to respect for her private life.

The Human Rights Act includes its own list of what types of treatment count as discrimination. This includes treatment which is illegal under other laws that are specifically about discrimination (see page 5). But it also covers other types of discrimination. For example, carers and homeless people have successfully used the Human Rights Act to complain about discrimination when trying to make use of their human rights.



For more information on human rights contact one of the organisations listed under 'Equality and Human Rights organisations' on page 12.

Criminal law

The person discriminating against you could be committing a criminal offence, whether it's someone at work, a service provider or someone completely different like a neighbour or a stranger in the street. If someone is violent towards you or you feel physically threatened by them, this amounts to an assault. If they damage your property (by smashing your windows, for example, scratching your car, or daubing graffiti on your property), that's criminal damage. There is also a criminal offence of harassment. Crimes committed by someone because of their hatred of your sex, transgender status, race, disability, sexual orientation or religion, are taken very seriously. If you think that the treatment you have suffered amounts to a criminal offence, you should report it to the police.



Civil laws

If the person discriminating against you causes you financial loss in some way, you might be able to take them to court to get compensation. Or you might want to take them to court to put a stop to their unwanted behaviour. Again, this is possible whether the person discriminating against you is someone at work, a service provider, neighbour or a complete stranger. For example:

If someone damages your property, this is potentially not only a criminal offence but could also give you a claim for compensation for trespass to property.

If someone is harassing you, you might be able to get a non-harassment order or an injunction (in Scotland, an interdict) from court. These are all formal orders telling someone that they must not behave in a certain way, such as come within a certain distance of you or your home. If that person ignores the order, there will be consequences for them (which differ slightly depending on the type of order you have).

The effects of discrimination

Your health

Discrimination can be extremely upsetting. If the way you are being treated is making you feel stressed, anxious or depressed, make an appointment to see your GP. Explain what is happening to you and how it is making you feel. Your GP should be able to tell you about different treatments and therapies you could try and give you the details of local support groups.

Money worries

If you've lost your job because of discrimination or it's making it hard for you to get a job in the first place, you might also need help with your finances. Talk to an adviser to see whether you can claim any more help. To find out more about benefits and debt, go to www.adviceguide.org.uk.

Other rights



You can put a stop to discrimination. Take a look at our other guide, 'You don't have to put up with it - dealing with discrimination' for information on what to do next. www.isthatdiscrimination.org.uk

Where to get help

The following organisations can give you the information, advice and support you need.

Equality and human rights organisations

Equality and Human Rights Commission

www.equalityandhumanrights.com

The Equality and Human Rights Commission is an independent public body. Its helpline gives information and guidance on discrimination and human rights issues, as well as providing information on its website. In limited circumstances, they will help people to take discrimination claims to a court or tribunal. It covers England, Wales and Scotland.

England

Telephone: 0845 604 6610

Textphone: 0845 604 6620

Wales

Telephone: 0845 604 8810

Textphone: 0845 604 8820

Scotland

Telephone: 0845 604 5510

Textphone: 0845 604 5520

Where to get help

Equality Commission for Northern Ireland

www.equalityni.org

The Commission provides information, guidance and assistance on equality and discrimination issues. If you need information about your rights or you think you have been discriminated against, discrimination advice officers can give free confidential advice and assistance. It covers Northern Ireland only.

Enquiry Line: 028 90 890 890

Textphone: 028 90 500 589

Northern Ireland Human Rights Commission

www.nihrc.org

If you think someone has interfered with your human rights you can contact the Commission for advice:

Telephone: 028 9024 3987

Textphone: 028 9024 9066



Find an adviser

Independent advice agencies

There is a range of independent advice centres across the UK. Some give general information and advice on a range of subjects, including discrimination, whilst others specialise in one or more area of law. To find out if there is an independent advice centre near you, contact:

AdviceUK (if you are in England, Scotland or Wales)

Telephone: 020 7407 4070

www.adviceuk.org.uk

AdviceNI (if you are in Northern Ireland)
Telephone: 028 9064 5919
www.adviceni.net

Citizens Advice Bureaux

Citizens Advice Bureaux help people resolve their legal problems, including employment and discrimination problems by providing free information and advice. To find out where your nearest CAB is you can contact:

Citizens Advice
(if you are in England and Wales)
www.citizensadvice.org.uk/index/getadvice.htm

Citizens Advice Scotland
Telephone: 0131 550 1000
www.cas.org.uk

Northern Ireland Association of Citizens Advice Bureaux
Telephone: 028 9023 1120
www.citizensadvice.co.uk

Law Centres

Law Centres employ solicitors and caseworkers specialising in social welfare law including discrimination. They provide free advice, representation and education on legal rights. To find your nearest Law Centre contact:

Law Centres Federation
Telephone: 020 7428 4400
www.lawcentres.org.uk



Find a legal aid solicitor

Community Legal Advice

Community Legal Advice is a free, confidential service to help people deal with their legal problems. You can contact them for details of local advice services including solicitors who undertake legal aid work. It covers England and Wales:

Telephone: 0845 345 4 345
Minicom: 0845 609 6677
www.communitylegaladvice.org.uk

Northern Ireland Legal Services Commission

The commission funds solicitors and advisers to do work for people who need legal aid (help from the government with their legal costs). You can search for a legal aid lawyer on their website:

Telephone: 028 9040 8888
www.nilsc.org.uk

Scottish Legal Aid Board

You can find out if you qualify for legal aid and where to find a legal aid solicitor through the Scottish Legal Aid Board website and helpline:

Telephone: 0845 122 8686
www.slab.org.uk

Where to
get help

Find any solicitor

The Law Society

The Law Society represents solicitors in England and Wales. You can search for a solicitor by area of law on the Law Society website or by calling its helpline:

Telephone: 0870 606 2555
www.lawsociety.org.uk

Law Society of Northern Ireland

The Law Society of Northern Ireland can give you details of solicitors or firms in Northern Ireland.

Telephone: 028 90 231614
www.lawsoc-ni.org

Law Society of Scotland

All practicing solicitors in Scotland must be registered with the Law Society. You can search for a solicitor by area or type of law:

Telephone: 0131 226 7411
Textphone: 0131 476 8359
www.lawscot.org.uk/

Where to
get help



Find another charity or support group

There may be other charities or support groups that can help you that are not listed here. Many organisations are set up to support particular groups of people, for example, those with a disability, migrant workers or carers.

Look in your local phone book, ask at your local library or search on the Guidestar UK website:
www.guidestar.org.uk



Jargon buster

Jargon

What it means for discrimination

Claim

A case taken to a court.

Court order

An official decision by a court. In certain circumstances, courts can force someone to obey a court order by threatening them with fines, or even imprisonment.

Constructive dismissal

Where your employer treats you so badly that you are forced to resign, the law says that you are as good as sacked.

Direct discrimination

Where someone treats you worse than they treat other people because of who you are.

Duty to make reasonable adjustments

Employers and shops and service providers sometimes have premises, rules or ways of doing things that put disabled people at a disadvantage. The duty to make reasonable adjustments means that employers and shops and service providers have to take reasonable steps to reduce that disadvantage.

Harassment

Someone saying or doing things because of who you are that you find offensive, humiliating, frightening or in any other way distressing because of who you are.

Human rights

Basic rights which are covered by the Human Rights Act 1998.

Indirect discrimination

Where someone has a rule or a way of doing things that they apply to everyone the same, but which puts you, and other people like you, at more of a disadvantage and cannot be justified.

Injunction (in Scotland, interdict)

A court order forbidding someone from behaving in a certain way, such as coming within a certain distance of someone or their home.

Terms and conditions (of employment)

A written statement of your rights and obligations at work.

Tribunal

A bit like a type of court, dealing with employment problems. In England, Scotland and Wales it is called an employment tribunal. In Northern Ireland it is an industrial tribunal or fair employment tribunal.

Unfair dismissal

Where an employer sacks an employee but either: does not have a fair reason for doing so or has a fair reason for doing so but handles the situation unfairly.

Victimisation

Where someone treats you less favourably for complaining about being discriminated against or helping someone else to complain about being discriminated against.

Jargon buster



The blurb

The law is detailed and complicated. To stop your brain from aching, we've simplified things as much as possible so you can get a basic idea of how the law deals with discrimination. But this means we've had to miss bits out – bits that are likely to affect what the law would say about your own situation. So please don't rely on any of the examples used in this guide. Instead, before you take any action, get advice from a CAB, law centre or independent advice agency. If you need help working out who to speak to, go to: www.isthatdiscrimination.org.uk.

Your local advice agency can help you deal with discrimination. You can contact them here:

If you would like this guide in another format please contact ASA Advicenow on 020 7922 7727 or email info@advicenow.org.uk

What did you think of this guide?

If you've got any comments or would be willing to take part in a survey please feel free to get in touch.



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