England: Sex/gender, race, disability and age discrimination in access to healthcare

This document outlines legislation in England that prohibits gender, race, disability and age discrimination in access to healthcare.

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Sex/gender discrimination in access to healthcare

Sex Discrimination Act 1975

Summary: The Sex Discrimination Act 1975 ("SDA") prohibits sex discrimination against individuals in the areas of employment, education and the provision of goods, facilities or services as well as in the disposal or management of premises. No specific mention is made of discrimination with respect to the provision of healthcare services but the statute clearly bans discrimination in the provision of "goods, facilities or services," which is defined to include "any services of any profession or trade." It would, therefore, implicitly include healthcare. This statute applies to England as well as to Wales and Scotland.

The SDA prohibits direct and indirect sex discrimination. Direct sex discrimination occurs where a woman (or a man) is treated less favorably than a person of the opposite sex in comparable circumstances is or would be treated, because of his or her sex. Indirect sex discrimination occurs when a condition or requirement is applied equally to both women and men but, in fact, it affects a significantly greater proportion of women than men (or vice versa) and is not justifiable on objective grounds unrelated to sex.
**Text**: Section 29 of the SDA covers unlawful sex discrimination in the provision of facilities or services:


**Enforcement of Rights**

**How individuals may enforce their rights under the Sex Discrimination Act**: Claims must be brought in a county court in England (and, for Wales, in a county court in Wales and, for Scotland, in a sheriff court in Scotland). A strict time limit of 6 months (less one day) applies for sex discrimination claims unrelated to employment.

**Remedies available for unlawful sex discrimination (unrelated to employment)**: (1) A declaration that unlawful discrimination has occurred; (2) compensation for financial loss, injury to feelings and injury to health with interest; and (3) in a county court in England, an order that the discriminator stop the discrimination (and, in Wales, in a county court and, in Scotland, in a sheriff court).

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**Racial discrimination and access to healthcare**

**Overview of Relevant Statutory Law**: The relevant legislation on race equality issues is: (1) The Race Relations Act 1976 (as amended) and (2) the Race Relations (Amendment) Act 2000. Race Relations legislation makes both direct and indirect discriminations unlawful on the grounds of race, color, nationality (including citizenship) or ethnic or national origin. The law covers people from all ethnic groups, including Irish people, Roma and Travelers.

The Race Relations Act 1976, Ch. 74, section 1, and Race Relations Act 1976 (Amendment) Regulations 2003 No. 1626 (effective July 19, 2003):

**Summary**: The Race Relations Act 1976 obliges all institutions delivering healthcare to promote race equality across all their activities, including service provision. Discrimination under the Act is defined as where a person treats another less favorably or applies a requirement not equally applied to others based on racial grounds. In the instance of healthcare, the Act also prohibits discrimination where a person applies a provision, criterion or practice equally, but even the equal application of the provision disadvantages another, and the person discriminating cannot show the provision to be a proportionate means of achieving a legitimate aim.

**Text**: For the text of the Race Relations Act 1976, visit the following link:


**Enforcement of Rights**

**How individuals may enforce their rights under the Race Discrimination Act**: Claims must be brought in a county court in England and Wales or in a sheriff court in Scotland. A strict time limit of 6 months (less one day) applies for discrimination claims unrelated to employment.

**Damages**: Claimant may seek a declaration or damages, but may not seek and injunction unless a court determines that such a remedy would not prejudice any criminal investigation.
Race Relations (Amendment) Act 2000

Summary: The Race Relations (Amendment) Act 2000 came into force on April 2, 2001 and it amends the Race Relations Act of 1976. The 2000 Act places a general duty on all public authorities (named in Schedule 1A of the Race Relations (Amendment) Act and including the England & Wales NHS (as well as the Scotland NHS)) to promote race equality and eliminate unlawful racial discrimination. This duty covers all aspects of an organization’s activities, policy and service delivery, as well as employment practice. In everything they do all public bodies must aim to:

1. eliminate unlawful racial discrimination;
2. promote equality of opportunity; and
3. promote good relations between people of different racial groups.

Text: For the text of the Race Relations (Amendment) Act 2000, visit the following link:


Other relevant legislation

Adoption Act 1976
Summary: While not precisely aimed at discrimination to access of health care, the Adoption Act makes it unlawful for a public authority to subject a person to harassment in the course of carrying out any functions of the authority, which consist of the provisions of health care.

Government Initiatives for eliminating race discrimination and access to healthcare:

1) Commission for Equality and Human Rights

In 2006, the UK formed the Commission for Equality and Human Rights to achieve certain objectives: (1) "promote understanding of the importance of good relations between members of different groups, and between members of groups and others," (2) "encourage good practice in relation to relations between members of different groups, and between members of groups and others," (3) "work towards the elimination of prejudice against, hatred of and hostility towards members of groups," and (4) "work towards enabling members of groups to participate in society." In this statute, "group" means a group or class of persons who share a common attribute with respect of any of the following matters: (a) age, (b) disability, (c) gender, (d)
proposed, commenced or completed reassignment of gender, (e) race, (f) religion or belief, and (g) sexual orientation."

2) **Department of Health Race Equality Scheme, 2005-08**

The government's rationale for action on ethnicity and health is laid out in the Department of Health's Race Equality Scheme 2005-2008, a document the government is legally required to produce under the terms of the Race Relations Amendment Act 2000. According to the Department of Health, a person's ethnic identity matters for two broad reasons.

The first concern is about "responsiveness" to all patients' individual needs. The Department of Health’s Race Equality Scheme states that "the NHS increasingly needs to take into account not only cultural and linguistic diversity but also needs to be able to cater for varying lifestyles and faiths."

The second reason, according to the Department of Health, is that some ethnic minority groups experience poorer health than others (health inequalities) and also experience poorer access to services and poorer quality of services (inequities in access).

Current reforms aim to create a service that is more responsive to all patients' individual needs and reduce a "satisfaction gap" at the same time as reducing health inequalities and inequities in access.

**Delivering race equality in mental health care: An action plan for reform inside and outside services and the Government's response to the Independent inquiry into the death of David Bennett**

The Department of Health has also published a document containing (a) a five-year action plan for reducing inequalities in black and minority ethnic patients' access to, experience of and outcomes from mental health services; and (b) the government response to the recommendations made by the inquiry into the death of David Bennett, a black patient who died while at a medium secure psychiatric unit after being restrained by the staff.


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**Disability discrimination and access to healthcare**


**Summary:** The Disability Discrimination Act (1995 and 2005) ("DDA") prohibits disability discrimination in access to public goods, facilities and services among other areas. There is no specific reference to healthcare. However, the Act bans discrimination against persons with disabilities with respect to services provided to members of the public. The DDA was originally passed in 1995 and was amended in 2004 and 2005.

Section 19 of the DDA states that it is unlawful for a provider of services to discriminate against a person with disabilities in refusing to provide, or deliberately not providing, to the person with
disabilities any service which he provides, or is prepared to provide, to members of the public; in failing to comply with any duty imposed on him by section 21 of the DDA in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the person with disabilities to make use of any such service; in the standard of service which he provides to the person with disabilities or the manner in which he provides it to him; or in the terms on which he provides a service to the person with disabilities.

A "provider of services," according to the DDA, is one who is concerned with the provision of services to the public or to a section of the public and it is irrelevant whether a service is provided on payment or without payment.

The DDA allows differential treatment only if any of the following apply and are reasonable:

1. the treatment is necessary in order not to endanger the health or safety of any person (which may include that of the person with disabilities);
2. the person with disabilities is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment is reasonable in that case;
3. the differential treatment is necessary and otherwise the provider couldn't continue to serve the public; or
4. the difference in the terms on which the service is provided to the person with disabilities and those on which it is provided to other members of the public reflects the greater cost to the provider of services in providing the service to the person with disabilities (except where such terms make it unreasonably difficult for the person with disabilities to obtain the service).

**Exemption:** Section 21 of the DDA requires service providers to accommodate persons with disabilities for long as such accommodations won't change the nature of the services provided.

In 2005, the DDA was amended to include a prohibition of discrimination by public authorities as well. Section 21B defines a "public authority" as a person whose functions are of a public nature (excluding several military and governmental entities and actors). Differential treatment may be justified in the interests of safety, incapacity to give consent, substantial extra costs or protection of freedoms, and only if these interests are the legitimate aim of the differential treatment.

**Enforcement of Rights and Contracting Around the DDA:**
Claims must be brought in a county court in England (or, for Wales, in a county court of Wales, or, for Scotland, in a sheriff court in Scotland).

Section 26 of the DDA provides that any term in a contract for the provision of services is void, except settlements, so far as it purports to require a person to contravene the Act, exclude or limit the operation of any part of the Act or prevent a person from making a claim.

**Text:** For the text of the DDA 1995, visit the following link:

For the text of the DDA 2005, visit the following link:

**Disability Rights Commission**
The Disability Rights Commission was established by the Disability Rights Commission Act of 1999 to work toward the elimination of discrimination against persons with disabilities, to promote the equalization of opportunities for persons with disabilities, to take steps it considers appropriate to encourage good practice in the treatment of persons with disabilities and to review and work with the Disability Discrimination Act. The Commission may also investigate instances of discrimination.

For more information on the Disability Rights Commission, visit their website:
http://www.drc-gb.org/

**Age discrimination and access to healthcare**

There are no statutes that deal directly with Age Discrimination and health care. The Department of Health, through the National Service Framework, has introduced plans that it claims will increase the level of care for the elderly.

For more information, see the Department of Health website on the National Service Framework for Older people: