

Advertising

A good practice

checklist for advertisers

and publishers

The Equality Act 2010 ('the Act') protects individuals from discrimination because of sex, race, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, religion or belief, sexual orientation and age ('protected characteristics').

Publishers (who produce or display an advert) and advertisers (who target potential employees or customers using a form of media) are both legally responsible for discriminatory adverts. To ensure that an advert does not discriminate, consider the following questions before you publish it:

1. In what circumstances can adverts for goods, facilities and services be discriminatory?

An advert that restricts goods, facilities and services to a particular group is unlawful except in very limited circumstances. Please see the answer to question two below for more detail.

Examples of adverts for services which might be unlawfully discriminatory include:

- Adverts for hotels, restaurants, nightclubs, pubs and recreation centres giving preferential treatment to a particular group, for example an advert stating that women have free entry into a nightclub.
- Adverts for financial facilities provided by banks, credit card companies, stores, insurance companies, building societies and local authorities imposing requirements which disproportionately affect certain groups, for example an advert for credit that requires applicants to produce a particular national passport as proof of identity.
- Adverts for educational, professional or vocational training opportunities which restrict certain groups or treat them differently, for example an advert for a conference indicating that there will be separate seating for male and female attendees.
- Adverts for public transport or travel and transport facilities offered by private companies or travel agents which impose restrictions on particular groups, for example a holiday provider stating that it will not accept group bookings from all-male parties.
- Adverts for services provided by local authorities and other public bodies which exclude certain people, for example adverts for a new parent and toddler group that do not accept fathers or same-sex parents.
- Adverts for letting or selling premises, for example a homeowner advertising a room in their home for Asian tenants only.

2. Are you advertising the provision of goods, facilities or services restricted to a particular group?

There are limited circumstances under the Act when you can restrict the provision of goods, facilities and services to particular groups. There must be a legitimate aim for the restriction and the restriction must be a proportionate way of achieving that aim. Being proportionate means that there are no alternative, less discriminatory means of achieving that aim. This is known as 'objective justification'. An advert should clearly explain the basis and reasons for a restriction. For example, an advert for women-only swimming sessions might state that customer feedback showed that some women would not participate in mixed-sex sessions and that providing women-only sessions would make the service more effective for a greater proportion of female customers.

3. Are you advertising a job opportunity restricted to a particular group?

An employer can require a job applicant or employee to have a particular protected characteristic in very limited circumstances. This is where having that protected characteristic is necessary for the particular role (it is an 'occupational requirement'), or one of the specific exceptions in the Act applies. Where an occupational requirement applies, the employer must ensure that imposing the requirement is objectively justifiable.

Examples of requirements for applicants that may be discriminatory are:

- **Physical characteristics.** These should be excluded from advertisements unless it can be shown that they are a real requirement of the job that is proportionate to achieve a legitimate aim. For example, a requirement for a firefighter to pass a physical fitness test is likely to be lawful, but requiring applicants to be of a particular height may not, and may disproportionately exclude women and disabled people.
- **Age requirements.** These should be excluded unless they can be objectively justified. Requirements such as 'recent graduate' may be indirectly discriminatory against older people.
- **Driving licence requirements.** These may disproportionately exclude disabled people and must not be included unless driving is a genuine requirement for the role.

- **Religious requirements.** These should be excluded unless they are an occupational requirement and can be objectively justified. Requiring an accountant for a Catholic school to be Catholic is unlikely to be lawful because it is unlikely that observing a faith is needed to perform the role.

Where a restriction is applied, the advert must clearly state the reason for the restriction. For example, an advert for a care assistant for female service users might state: 'due to the provision of intimate care, this vacancy is restricted to women only'.

4. Where are you advertising a job?

Advertising widely, in a way which avoids the risk of excluding qualified people, is the best way of maximising the number of high quality applicants. For example, advertising a catering job only in Polish newspapers targets one group and is likely to exclude similarly qualified people able to do the job.

5. Does a job description or photograph attached to the advert imply that the job is open only to applicants who have a particular personal characteristic?

Descriptors, job titles and photographs which describe personal characteristics may be discriminatory as they imply only people with those characteristics are eligible for the job. To avoid implying that there is any restriction on who may apply, it is advisable to use neutral descriptions of the skill or experience you are seeking.

For example:

- Avoid words such as 'young', 'mature' and 'recent graduate', which imply a certain age is a requirement for a job and so exclude potential applicants. This may amount to unlawful discrimination. Instead, describe the required competencies or experience.
- Avoid job titles that imply a job may be done by men or women only. For example, instead of 'handyman' or 'barmaid', use 'maintenance worker' or 'bartender'.

- Avoid images that imply jobs are associated with particular groups, such as photographs showing only male mechanics or only female nurses. Use images that are neutral, for example, a picture of a hospital or a group of male and female nurses.
- Include a prominent equal opportunities statement that applications are welcome from all suitably qualified or experienced people to make clear that all applicants are welcome.

6. How do you advertise a job that requires an ability to be proficient in particular languages?

A requirement to be proficient in one or more particular languages will not be discriminatory where it is a genuine requirement for the job. In order for all potential applicants to understand that it is a genuine requirement, it is good practice to advertise in English, as well as the required language if preferred. For example, an advert for a salesperson who will have to deal with Dutch buyers may state a requirement for applicants to speak Dutch, but it is good practice for the job to be advertised in English or, if preferred, in both English and Dutch so that all potential applicants are aware of the requirement. However, advertising for fruit pickers in Polish only is likely to exclude non-Polish speakers from applying. The ability to speak Polish is unlikely to be a genuine requirement for the job so the advert would be unlawfully discriminatory.

7. What steps can you take to avoid publishing discriminatory adverts?

If you are concerned about the lawfulness of any advert, you should clarify the reasons for any potentially discriminatory requirements with the advertiser and establish whether they are relying on an exception in the Act.

8. How do you deal with enquiries about discriminatory adverts?

If you are a publisher and receive complaints about discriminatory adverts, they should be sent as soon as possible to the complaints team within your organisation. If a potentially discriminatory advert is not assessed quickly, discriminatory acts may already have taken place or, for job advertisements, the position may already have been filled.

Equality Act 2010 - Advertising

The Equality and Human Rights Commission has published a series of complementary guidance documents:

- **Advertising – What equality law means for advertisers and publishers**
- **Advertising – Frequently asked questions about what is lawful advertising for: jobs; goods, facilities and services; and accommodation**
- **Advertising – Making an enquiry about a discriminatory advert**

You can also find more detailed information in the **Employment Statutory Code of Practice** or the **Services, Public Functions and Associations Statutory Code of Practice** available on the Commission's website.

Contacts

This publication and related equality and human rights resources are available from the **Commission's website**.

For advice, information or guidance on equality, discrimination or human rights issues, please contact the **Equality Advisory and Support Service**, a free and independent service.

Telephone **0808 800 0082**

Textphone **0808 800 0084**

Hours **09:00 to 20:00 (Monday to Friday)**

10:00 to 14:00 (Saturday)

Post **FREEPOST Equality Advisory Support Service FPN4431**

Questions and comments regarding this publication may be addressed to: **correspondence@equalityhumanrights.com**.

The Commission welcomes your feedback.

Alternative formats

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