



# Advertising

Making an enquiry  
about a discriminatory  
advert



Equality and  
Human Rights  
Commission

## Introduction

**This guidance is for individuals who believe an advert may be discriminatory and want to bring their concerns to the attention of the advertiser and/or publisher.**

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

The Act applies to all publishers and advertisers and covers employment and the provision of goods, facilities and services. It also applies to: employment agencies and people who advertise for contract workers; vocational training services; trade unions; partnerships; education providers; the letting and selling of land or property; and service providers such as pubs, clubs and shops.

## What is an advert?

An advert is a notice or announcement — written or oral — promoting a job opportunity, a product, service or event. Adverts appear in newspapers, magazines, on the television, radio, internet, in shop windows and in emails.

## What is a discriminatory advert?

Adverts which restrict jobs or goods, facilities and services to people with particular protected characteristics, such as to men or to people of a particular age group, are unlawful except in very limited circumstances where the Act specifically allows such a restriction and it can be objectively justified. Please see page 4 and 5 for more detail.

An advertisement must be viewed as a whole. Descriptors, job titles, illustrations and pictures which relate to particular protected characteristics may be discriminatory as they may imply that only people with those characteristics are eligible for the job or service being advertised.

### Examples of adverts for jobs which might be unlawfully discriminatory include:

- Adverts using job titles or descriptions for job vacancies such as waitress, salesgirl or postman, or which use pictures that suggest the job is only open to male or female applicants, unless the advert makes clear that both men and women are welcome to apply. For example, an advert for a mechanic containing an illustration of a male mechanic should make clear the job is open to both men and women.
- Adverts published in a particular language or requiring proficiency in one or more particular languages where the ability to speak those languages is not a genuine requirement for the job. Such adverts are likely to exclude those who don't speak those languages from applying for the job, so may be racially discriminatory. Where proficiency in one or more languages is genuinely required, it is good practice for the advert to appear in English as well as the required language, so that all potential applicants can understand that it is a genuine requirement and the reason for it.
- Adverts specifying age limits for applicants, or using terms such as 'young and dynamic' or 'mature person'.

### 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 that 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.

## When is an advert which restricts a job or service to particular groups lawful?

There are very limited circumstances under the Act when employers or service providers can target particular groups in their adverts.

An advert that restricts goods, facilities and services to people with a particular protected characteristic is lawful only where there is a specific exception in the Act that allows such a restriction. Most restrictions must be objectively justified. In order to be objectively justified 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.

An advert should clearly explain the basis and reasons for the restriction.

Employers can require a job applicant or employee to have a particular protected characteristic only 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. For example, it would be lawful for a company providing bicycle courier services to advertise for couriers who 'must be able to ride a bicycle' – while this might exclude some disabled people, the requirement is necessary for the role and applying it is a proportionate way of ensuring applicants can do the job.

It is lawful for private members' clubs, such as golf and bowling clubs, to restrict membership to persons who share a protected characteristic, except on the basis of colour. However, they cannot discriminate between members, for example by offering different membership rates for men and women. Also, if the club provides a service which is open to the public, it is unlawful to restrict access to that unless one of the specific exceptions in the Act applies.

## Can employers advertise that job applications from particular groups are welcome?

It is not unlawful to encourage groups who share a particular protected characteristic to apply for vacancies in order to address disadvantage or underrepresentation. This is called **positive action**. Positive action is lawful if it is reasonable to think that people with a particular protected characteristic are underrepresented or face disadvantage and the action taken is proportionate.

If an employer wants to take positive action in this way, the advert should clearly state the employer is seeking applications from everyone but wishes to encourage applications from people with a particular protected characteristic on the basis that they are underrepresented or face disadvantage. Positive action in employment can only be used to encourage people to apply for a job. It cannot be used to restrict the job opportunity to someone with a particular protected characteristic or result in an applicant being treated more favourably during the recruitment process because they have a protected characteristic. However, if the two best candidates for a job are equally qualified, the candidate from a disadvantaged or underrepresented group can be given preference for the job if this is a proportionate means of helping to address the disadvantage or increase the group's participation.

It is also lawful to treat disabled people more favourably in a recruitment process by operating a guaranteed interview scheme for those who identify as disabled and meet the minimum requirements for the post. An advert stating this would not be unlawful.

## Which organisation deals with complaints?

Anybody can complain to the advertiser or publisher about a discriminatory advert. If an individual has suffered a disadvantage, they can use the advert as evidence for their claim. The Equality and Human Rights Commission can use its enforcement powers to take action in relation to discriminatory adverts even where it has not identified any individual who has been disadvantaged by the advert, for example by being prevented or deterred from applying for a role, or being deterred from using or excluded from a service.

The Advertising Standards Authority (ASA) is the UK's independent regulator for advertising across all media. You can complain to the ASA if you think an advert is dishonest or misleading or if a special offer, competition or prize promotion is unfair.

## How do I make a complaint?

If you believe an advert for a job or for goods, facilities or services is discriminatory, you should write to both the employer or the goods, facilities or services provider and to the publisher of the advert (for example, the newspaper or website).

Where possible your letter should include a copy of the advert and provide the following:

- Where the advert was published (for example, which newspaper or website) and the date of publication.
- The reason you believe the advert is discriminatory.

You should also:

- Ask for reasons why the advert does not breach the Act (include a link to the Act if sent by email).
- Ask for a reply within 21 days.

Keep a copy of the letter or email. If you want to ensure that the letter has been received, you can send it by recorded delivery. If you do not receive a reply, or you are not satisfied with the response, you may want to send a copy of the advert and all relevant correspondence to the Commission for us to consider.

## What is the Commission's approach to discriminatory adverts?

When we receive a complaint about a discriminatory advert, we assess the content and context of the advert along with any correspondence between the advertiser/ publisher and complainant.

We may then write to the advertiser and/or publisher to ask what their justification is for the advert.

If we receive a reliable justification or an assurance that it was an error and will not happen again, we close the complaint.

The Commission resolves most complaints without taking formal action. However, if a satisfactory assurance is not received, we will consider whether taking further steps, such as enforcement action, might be of significant public benefit.

We do not provide individuals with advice or an opinion on the legality of an advertisement.

We do not provide information to members of the public about our inquiries into discriminatory adverts. This is because doing so could compromise any enforcement action and unfairly damage the reputation of the company or individual if allegations are not subsequently proven.

## Have you suffered a disadvantage because of a discriminatory advert?

If you believe you have been discriminated against by an advert, such as being refused a service, and want to make a claim, you will need to be able to prove that you have suffered a disadvantage. The existence of a discriminatory advert will help provide documentary evidence for your claim.

If you wish to apply for an advertised job that restricts applications to people with a particular protected characteristic that you do not have, you should ask the employer or recruitment agency whether an occupational requirement or exception applies. If none does, you should be treated equally to all other applicants. Should you apply in time but not be invited for interview, despite being suitably qualified and experienced, you may wish to make further enquiries about the reasons for your non-selection. If the reasons given relate to a protected characteristic for which there is no occupational requirement or permissible exception in the Act, this may indicate that you have been subject to discrimination.

If you want guidance on your particular situation you should contact the **Equality Advisory Support Service**, which provides advice to individuals who may have experienced discrimination.

# 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 – A good practice checklist for advertisers and publishers

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.

Complaints about dishonest or offensive advertising should be made to the **Advertising Standards Authority**, Mid City Place, 71 High Holborn, London, WC1V 6QT.

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## 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.

Website **[www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)**

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](mailto:correspondence@equalityhumanrights.com)**.  
The Commission welcomes your feedback.

## Alternative formats

This guide is available as a PDF file and as a Microsoft Word file from the **Commission's website**. For information on accessing a Commission publication in an alternative format, please contact: **[correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com)**

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