

# Positive Action: For Service Providers

Welcome to Module Nine – a five minute introduction to what extra you could do, if you choose to, by taking [positive action](#) under the new Equality Act. This action would be to help disabled people and socially or economically disadvantaged people, who use your service or who are members of your association, to achieve more effective equality. They might also be potential service users or association members.

### Who does positive action apply to?

- People with shared [protected characteristics](#) (listed in **Module Six**) may be:
  - Socially disadvantaged
  - Economically disadvantaged
  - Affected by the consequences of:
    - Past or present discrimination
    - Past or present disadvantage.
- For example, certain groups may experience:
  - High levels of poverty and social disadvantage
  - Persistent discrimination
- As a service provider, you can use positive action where you believe one of these conditions apply:
  - People who share a protected characteristic suffer a disadvantage associated to that characteristic
  - People who share a protected characteristic have needs that are different from the needs of people who do not have that characteristic
  - Participation in an activity by people who share a protected characteristic is disproportionately low
- You can take proportionate action to address one or all of these situations to achieve one of the following aims:
  - Enabling or encouraging people to overcome or minimise disadvantage
  - Meeting different needs
  - Enabling or encouraging participation

- Your action may involve treating members of a group, who share a particular protected characteristic, more favourably than other groups which is entirely legal under the Act as long as:
  - The conditions about the disadvantage of a particular group, outlined above, are met.
  - The positive action is a balanced or proportionate means of achieving one of a number of aims.
- Although the Commission strongly recommends applying positive action to address inequalities, it is not a legal requirement.

### **Positive action is different to positive discrimination which is illegal**

- The Equality Act allows service providers to improve services to people who share a protected characteristic through positive action, as long as the measures taken meet particular conditions and do not go beyond certain limits.
- Positive discrimination is not allowed where an action treats a person or a group of people better just because of their protected characteristic and does not meet positive action conditions and permitted limits.
- The only protected characteristic which is an exception to this is disability

### **Disability**

- As a service provider, you are always allowed to go one step further in service delivery for disabled people without this being unlawful discrimination against non-disabled people in the same circumstances e.g. through the provision of reasonable adjustments.
- This means that you can, if you wish, restrict services to disabled people only, and this will be perfectly lawful. An example of this is if a leisure centre wishes to broaden its customer base by offering special swimming times for disabled people only or if a train operator offers fare concessions to disabled people.

## Implementing positive action

- It is important that, as a service provider, you explain to any staff and to users of your services why positive action is being taken, to make sure:
  - They understand the measures you have taken
  - They know why you have taken them
  - They do not create any resentment.
- To identify possible causes of disadvantage, different needs and under-representation and to develop and evaluate appropriate positive action steps, you may well find it helpful to involve members of relevant groups of users of your services.

## Examples of positive action

A voluntary organisation running bereavement counselling services finds through surveys that lesbian and gay clients are less satisfied with the service than heterosexuals. Some of the dissatisfaction arose from a failure to meet the particular need for counselling by specialist counsellors who had a greater understanding of the impact of homophobia on experience of loss. The voluntary organisation is now making it clear in information on its services that specialist counsellors will be arranged if a client requests it.

A golf club discovers its membership profile does not reflect the local community. It advertises across all sectors of the community and promotes the club as a venue for weddings and civil partnerships. It also states that it has suppliers in place who have experience of Hindu and Muslim related events. As more people come to the club for other events, they become more interested in joining. The Asian members of the community benefit through increased use of the golf club facilities and the club benefits by a growth in membership.

Research shows that there is currently (in 2010) a shortage of male primary school teachers in England and the number of male teachers has fallen steadily since the 1980s. It is felt that this gender imbalance needs to be addressed in order to provide sufficient male role models in an education setting for primary school age children.

The Teaching Development Agency for Schools (TDA) is counteracting this by organising events in schools around England. Hundreds of men will attend the sessions in which school staff will talk about why they should join the profession.

### **Some questions to consider**

- Positive action could be good for uptake of your services or for your association's membership. Have you considered whether it would be worth going further than is required by the law by taking positive action?
- Do you reasonably think that there are low participation rates of certain groups in your community?
- What protected characteristics are there among the groups you serve? What extra could you do via positive action to help people with these characteristics to achieve fuller or more effective equality?
- Are there any local groups who could help you respond to the Equality Act, particularly when it comes to positive action?

### **Exceptions**

As well as the exceptions which apply to every service provider and positive action, there are additional exceptions for:

- Charities
- Religion or belief organisations

Please refer to our guidance for more detail on this:

[www.equalityhumanrights.com/ea2010](http://www.equalityhumanrights.com/ea2010)