

THE EQUALITY ACT 2010 AND GOLF

Introduction

In 2007, a government green paper entitled "A Framework for Fairness" was published, which announced the government's intention to introduce a single piece of new legislation to consolidate a number of existing pieces of legislation and to extend controls to new areas. The Framework for Fairness clearly outlined intentions to make discrimination within clubs unlawful, which had largely escaped legal control in this area previously. The document made specific mention of golf clubs as an example of a type of club where some had continued to discriminate on the basis of sex particularly and that, as previous encouragement for the sport to address this issue voluntarily had not been effective, legislation would be introduced to control discrimination.

The Equality Act 2010 is the culmination of the consultation following the publication of the Framework for Fairness and received Royal Assent just prior to the 2010 General Election. The scope of the Act is wide ranging, with the elements relating to sport, including golf clubs, forming a small part.

Since 2007, golf's national governing bodies have received a large number of enquiries from golf clubs and individual members regarding the proposed changes in legislation. Having studied the Equality Act 2010, the EGU and EWGA have produced this document to provide guidance to golf clubs and members.

This document contains the advice and opinions of the EGU and EWGA. It should not replace legal advice tailored to your specific circumstances.

1. What is the Act intended to control?

The Act makes it unlawful to discriminate against members, associate members, prospective members and guests on the basis of a protected characteristic, whether directly or indirectly. This does not mean that all must be treated identically; just that no-one must be treated less favourably because of their sex, race, religion, disability, etc.

The Protected Characteristics listed in the Act are:

- Age;
- Disability;
- Gender reassignment;
- Marriage and civil partnership;
- Race (including ethnic origin, national origin, colour, nationality);
- Religion or belief;
- Sex;
- Sexual orientation.

To come within the scope of the Act and therefore be actionable, any direct or indirect discrimination must be on the basis of one of these characteristics.

For example: A club has a waiting list but fast-tracks single figure handicap players to the front of the list. Golf handicap, talent or ability is not a protected characteristic and therefore these circumstances would not fall within the scope of the Act.

Discrimination is defined within the Act as when a person is treated less favourably than another person was or would have been because of a protected characteristic.

For example: Club rules do not permit women to play on the course on Sunday mornings. Women, who share the protected characteristic of their sex are being treated less favourably than men in this case as they do not have the same rights of access to the course.

The Act also controls discrimination where the person does not have the protected characteristic, but was treated as if they had (*for example, if they are believed to be disabled but are not*), and where the person is discriminated against because of their association with someone who has a protected characteristic (*for example, if the husband of a disabled woman was prevented from entering the club because of his wife's disability*).

Indirect discrimination is also unlawful. This is where a rule, policy or practice applied to all results in those sharing a protected characteristic being particularly disadvantaged in comparison with those not sharing the protected characteristic. However, if the rule or practice is in place to meet a legitimate objective in a reasonable way, then it may be justified. A legitimate aim would be where the club is seeking to:

- Ensure services are targeted at those who most need them.
- Ensure the health and safety of those using the service.
- Prevent fraud or other abuses of the service.
- Ensure the wellbeing or dignity of those using the service.

For example: Club rules state that all members, regardless of sex, are permitted to play at all times, but the course is closed 40 Saturday mornings of the year for men's competitions. The club would have to demonstrate that the closure of the course every Saturday was a reasonable practice to meet a legitimate aim, or women may be considered to be indirectly discriminated against.

Where children (i.e. those under the age of 18) are discriminated against on the basis of their age, the law does not apply. However, if a junior is discriminated against on the basis of another of the protected characteristics, the law still applies.

For example: A club insists that an Asian boy may only join as a junior member if he has a handicap. There are other examples of white boys joining the club without handicaps. This may still be within the scope of the Act, if the club has imposed this requirement because of the boy's race. The discrimination is not related to his age, but his ethnic origin.

2. When does the Equality Act 2010 come into force?

The requirements of the Act relating to all protected characteristics, with the exception of age, come into force on 01 October 2010. The government has decided not to introduce the requirements relating to the protected characteristic of age at this time. There will be government consultation on this aspect in the Autumn 2010, with a view to bringing the requirements into effect with regard to age in 2012.

No transitional arrangements are in place. Clubs must therefore comply by 01 October 2010 in relation to all protected characteristics other than age. We recommend that the implications of the inclusion of age within the legal controls should be considered by clubs now, to enable consultation with members, transitional arrangements and other actions which will ensure a smooth transition.

3. Who does the Act apply to?

Part 7 of the Act applies to "Associations". These are bodies:

- with 25 or more members,
- which control access to membership by rules and
- which use a genuine selection process on personal criteria.

As the majority of clubs require that potential members' applications are passed by a committee, usually involving an interview, they fall within the scope of the Act.

If the club does not use a selection process, Part 3 "Services and Public Functions" of the Act applies, which contains very similar provisions.

4. What must clubs do?

Clubs should examine their practices, rules, policies and conventions to ensure that they are non-discriminatory, either directly or indirectly. The club should consider whether there is another way to achieve the aim of the policy, rule or practice that would not involve putting certain groups of people at a disadvantage and make reasonable adjustments where necessary. It is recommended that, where adjustments may take time to implement, the club has a clear plan for achievement of the changes and monitors its progress against that plan.

Clubs must make sure that they do not:

- refuse membership or grant it on less favourable terms because of a protected characteristic, or
- refuse an existing member access to a benefit or deprive them of membership or rights because of a protected characteristic.
- refuse to allow a person to be a guest or discriminate against the guest in the way they provide them with the services normally offered to guests on the basis of a protected characteristic.

For example: A member has invited his father-in-law to play at his club. When they arrive at the club, the member is told that his father-in-law cannot play that day because he will "take too long and annoy the members" due to his visual impairment, and use of a guide to assist him in his play. Although the father-in-law is not a member or a prospective member, he is a guest and to prevent access to the course on the basis of his visual impairment is to discriminate against him on the basis of his disability.

This does not mean that all must be treated identically, but rather that all are treated fairly and given equal opportunities to participate and enjoy the benefits of membership. In some cases people must be treated differently in order to receive a fair service from the golf club. In these cases positive action may be appropriate to bring this group of people to a level starting position with others. Positive action refers to a range of methods which may be used to counteract the effects of past discrimination, to encourage participation or to address existing inequalities.

The Equality Act 2010 allows clubs to take "positive action" in certain circumstances. This means that if:

- People who share a protected characteristic are disadvantaged because of this characteristic, or
- People who share a protected characteristic have particular needs related to their characteristic, or
- If participation by people sharing a protected characteristic is disproportionately low.

Then the club may take positive action to:

- Overcome that disadvantage associated with sharing the protected characteristic, or
- Meet the specific needs of people sharing the protected characteristic, or
- Encourage participation amongst that group of people.

In cases where positive action is taken, then the club should be able to justify the action on the basis of one of the circumstances given above, and be able to back this up with evidence.

For example: A member has Parkinson's disease and although he can walk short distances, he has difficulty with any longer journeys. He therefore cannot play a full round of golf unless he uses a golf buggy. The club has a rule that buggies may not be used in competitions, because it believes that those using them will receive an unfair advantage. The club should review their ruling to allow disabled players the opportunity to use a buggy, provided they meet certain criteria, as disabled people have particular needs associated with their disability that are different from able bodied players. If their disability prevents them from walking the course, they do not have access to the full benefits of membership, which include entry to competitions, and a change of rule to allow the use of buggies by the relevant disabled players is necessary.

For example: A club has 1000 members, but only 90 of them are female. The Management Committee therefore concludes that a campaign is needed to encourage women to join and decide to offer a course of introductory lessons to women, waiving the joining fee on entry and offering a discount off the first year's membership. This would be considered "positive action" to increase the disproportionately low level of female participation in that club. It would be sensible for the club to monitor the success of the project and ensure that cost is a factor determining whether women join the club or not and that their positive action is having an effect. Once the level of female membership has increased to the target level, they should remove the discounts.

5. What are the penalties/remedies contained within the Act?

Where a member, prospective member or guest of the club believes they have experienced discrimination, they may challenge the club's action, processes and policies in court. Cases heard in the County Court may result in damages being awarded against the club in the favour of the complainant. This means that the complainant can receive monetary compensation for not only the harm they suffered as a result of the club's treatment, but also for "injured feelings". The club may also be compelled by the court to alter their practices to prevent future cases of discrimination.

6. Common Questions

The following provides some examples of the questions that have been asked by clubs regarding the Equality Act. They are intended to provide you with a better understanding of the Act and its application to golf, but the individual circumstances of your club should be considered in the light of the principles of the legislation.

Subscription discounts

a. A Golf Club has a "Senior" category of membership for both men and women. To qualify, the member must have been a member for 15 continuous years in the full

subscription category and aged at least 65, and have joined before 2008. May the club still offer this "loyalty discount"?

Loyalty discounts do not fall within the scope of the legislation, but it is expected that age-related differences in the level of subscriptions will, from 2012. See Section 2.

In order to offer a reduced subscription to senior members, the club must be able to justify the practice on the grounds that the needs of people within that age group (not just the needs of members within that age group) are such that a discount is a reasonable and proportionate means of meeting their needs, which are distinct from other age groups. As the age profile of many golf clubs shows a high proportion of senior members, it may be difficult for the majority of clubs to justify such action. The government's consultation process has been introduced in the area of age related discrimination as the discussions are so complex.

b. We offer discounts to younger members between the ages of 18 and 28. Does the Equality Act 2010 mean that we can no longer do so?

It is not anticipated that the requirements of the Act relating to age will come into force until 2012, therefore this practice is not unlawful, provided the same opportunities are offered to any person within this age range, regardless of sex, race, disability, etc.

However, after 2012, consideration must be given to justify this practice in line with the positive action requirements. See Section 4. The club must be satisfied that it is able to justify the reduced subscription rates offered to this age group on the grounds that it is trying to increase the current under-representation of people within this age range, backed up with evidence.

Representation, voting rights and committees

c. How are voting rights affected by the Equality Act 2010? Will all members (whatever their subscription rates e.g. house or juniors) have the right to vote?

Type of membership is not a protected characteristic, therefore you may offer different levels of service to members dependent on the membership package they have, and therefore exclude voting rights to some categories of membership. However, the differences cannot be based on a protected characteristic, and therefore all packages must be available to both men and women, disabled and non-disabled people, etc.

Although it may be lawful to exclude voting rights to some membership categories, consideration should be given to the reasons for this restriction. The perspective of those in different categories deserves attention and could provide the club with a balanced approach to its business.

d. A club has a Management Committee of about 8 men, the Lady Captain and the Lady Secretary. The ladies' section also has their own committee which independently manages the ladies' fixture list, handicaps, subscriptions and finances. Is the club required to increase the number of women on the Management Committee, and disband the Ladies' Committee?

It is not unlawful to have a committee which is unbalanced in numbers of men and women. The relevant issue is rather the means by which an individual may be elected to the committee, how members participate in the election process and the fair representation of all members.

If women are restricted from being elected to positions on the Management Committee, or if women are restricted in their voting rights in comparison with men, then it is possible that these arrangements are unlawful. If certain positions within the men's section are afforded a place on the committee, where their equivalents on the women's committee are not, then this may also be unlawful.

It is important that a member of either sex has a reasonable chance of election to a position of representation, not just in terms of the rules of the club, but also in terms of their practical implementation. In effect, it may not be sufficient to simply change the rules regarding who may stand for election- either sex must have a fair and equitable experience of the process of standing for election.

It may not be necessary to disband the Ladies' Committee, unless this results in an inequitable treatment of men within the club, but by the same token, the existence of a Ladies' Committee does not allow a different approach to be taken to the balance of representation on the main Club Management Committee.

e. Our club has a Ladies' Captain and a Club Captain. The Club Captain is appointed by previous captains, and must be male. Is this practice still acceptable under the Act?

Where the Club Captain has only been selected by male members, and by convention, if not by constitution, must be male, the current practice should be amended to avoid challenge under the Act. The Club Captain, in order to truly live up to that title, must be able to be of either sex and selected through a fair process which provides women with a reasonable chance of selection.

Access to the course and competitions

f. The rules of a club state that women may only play after 2pm in the winter and after 4pm in the summer on a Saturday. Women pay 80% of the full subscription rate in return for this restriction. The vast majority of female members do not wish to pay full subscription rates in return for full playing rights. They wish to maintain the current situation. How will the Equality Act 2010 affect this situation?

To restrict access to the course for women on certain times and days is to discriminate on the basis of the protected characteristic of sex, and therefore is unlawful. Women and men must have equal access to the course and the current practice of restrictions for female members on Saturdays should be amended. Although women currently pay 80% of the full subscription rate in return for restricted access to the course, they currently have no other option, and therefore this practice is discriminatory. Men and women should pay the same fees as others in their membership category; the price they pay must not be determined by their sex. If a restricted category of membership is to be offered, it should be offered to either sex.

Although a vote of current members may indicate a wish to maintain the status quo, clubs are not able to use a vote, however democratic, to circumvent the requirements of the Act. There are many women who are deterred from choosing golf as a sport, or from joining a club because they are not provided equal access to the facilities at the weekend. In the current climate, many golf clubs have indicated that they have difficulty in filling membership spaces in general, and in particular with younger women, and a change to a more equitable approach, affording women greater and fairer access to the course could assist in attracting women to golf who would previously been excluded by traditional access restrictions.

g. The tee is reserved on approximately 50% of Saturdays during the year, and mainly in the months April to September, from 8am until 3pm for men's competitions. The starting list is fully booked for every competition on Saturdays, with many more men wishing to play, so we can't give women access on these days. The course is just too busy and the competition too popular.

It is not unlawful to reserve tees for competitions, but the wider context should be carefully considered. Does the reservation of the tee for men's competitions actually result in the course effectively being unavailable for women on Saturdays, even though the club rules state that both men and women have access to the course at any time?

It may be possible for the tee to be reserved for competition golf on certain Saturdays, which allows both men and women to play during this time, with men's and women's competitions running concurrently. The course restriction is therefore on the basis of entry to a competition, rather than sex.

h. Are single-sex competitions no longer acceptable? Must both men and women play from the same tees and under the same competition conditions?

Where the "physical strength, stamina, or physique of average persons of one sex would put them at a disadvantage compared to average persons of the other sex as competitors" in a sport, that sport may continue to operate competitively separated by gender. Golf clearly falls within this category of sport, and separate competitions, from separate tees may continue.

Membership

i. Club rules state that women are only allowed to make up to a quarter of the total membership of the club.

This practice would not be considered lawful. However, if all membership spaces were freely available to all, then there may be an erosion of the women's section altogether, or to very low levels, which would upset the balance of a healthy club and make the recruitment of new female members even more difficult. It therefore may be appropriate to allocate a minimum number of spaces to either gender.

j. Our club is a gentlemen's club where women are not admitted to any form of membership. Are we now required to admit women to the club?

No. Genuinely single-sex clubs are not affected by the Act, and may continue to restrict their membership to one sex. However, if members of the opposite sex are permitted to join associate categories of membership or are invited as guests, then the club needs to comply with the Act.

k. Does the Act mean that the club may only have one category of membership?

No. The club can offer a variety of different membership options; it is just that the categories must not be determined on the basis of a protected characteristic. The junior section may remain, as discrimination on the basis of age for those under the age of 18 is not included within the scope of the Act.

Clubs are also able to offer discounts for certain types of members, provided the different treatment of this group of people is to achieve a legitimate aim, such as to encourage an increase in participation amongst that group, or to overcome a disadvantage they suffer.

I. The club has strict dress codes which differ between men and women. Must we change the codes to treat men and women the same?

Obviously, men and women conventionally wear different types of clothes, and therefore it would be difficult to draft a dress code which would accommodate these differences. However, to be consistent with the principles of equality clubs should ensure that their codes do not result in inequalities that are significant. For example, if men must wear a jacket and tie in the dining room, but women are able to wear the clothes they have played golf in. Dress codes in golf have evolved over time and should continue to do so to reflect better the wider society without compromising standards.

Conclusion

The Equality Act 2010 presents some challenges for clubs to address in order to ensure compliance, but there is a strong business case for approaching the process of change in a positive and proactive way.

In the current climate many golf clubs are experiencing difficulties in attracting new members and the introduction of the Act could provide the catalyst for a thorough examination of the benefits of membership that are being offered to potential customers. There are many reasons why women, disabled people and those from ethnic minority communities are not attracted to golf club membership, but some of these can be addressed with a more equitable approach and a different membership offer, which will enable clubs to attract members from new sectors. An open and inviting club may be more attractive to many potential members.

It is recommended that clubs communicate clearly with their members during the process of determining the changes necessary for compliance with the Act. If the members are aware of the constraints within which the club must operate, they may understand that some changes must take place, even though they may not welcome them. An open and honest discussion of the requirements of the Act may also provide innovative ideas.

Contacts

More information about the Act in general terms may be found on the following sites:
Government Equalities Office www.equalities.gov.uk
Equality and Human Rights Commission www.equalityhumanrights.com

The EGU and EWGA websites contain information about Equality and Diversity, Development Initiatives and a range of other issues effecting clubs:
www.englishgolfunion.org or www.englishwomensgolf.org

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