

Advice to local u3as on the legality of single sex groups

DISCLAIMER:

This note is a general exposition of the law as it applies to circumstances in which a local u3a wishes to establish or maintain a group or network which is restricted to men (and which excludes women from meetings and other activities).

It may not address all the issues which arise in any given set of circumstances, and local u3as are advised to seek the guidance of the national office of the Third Age Trust or instruct an independent legal professional if in any doubt about a proposed course of action.

Neither Third Age Trust nor the legal professionals who assisted in the preparation of this paper shall be held liable for its content.

1. EQUALITY ACT 2010 – THE GENERAL RULE

- 1.1 Under the Equality Act 2010 it is unlawful to discriminate directly or indirectly against anyone because of a protected characteristic. Sex is a protected characteristic.
- 1.2 Seeking to exclude someone from participating in an event or organised social group on the basis of their sex would constitute direct discrimination in this context, and so the establishment of a men only group would prima facie be unlawful.
- 1.3 But there are exceptions under the relevant legislation which permit in limited circumstances what would ordinarily be a discriminatory practice.
- 1.4 In particular, the legislation contains (a) a general exception for positive action which is applicable to all organisations, and (b) an exception specific to charities.

2. POSITIVE ACTION

- 2.1 Positive action is a means by which service providers can help people who are disadvantaged or under represented to achieve the same chances as everyone else. It is not the same thing as positive discrimination, which is often referred to colloquially but which is still unlawful.
- 2.2 Under the exception, charities can take positive action when all of the following conditions are met:
 - 2.2.1 Condition 1: Service providers must reasonably think that a group of people who share a protected characteristic and who are, or could be, using the service:
 - (a) suffer a disadvantage linked to that characteristic; or
 - (b) have a disproportionately low level of participation in this type of service or activity; or
 - (c) need different things from this service from other groups.

- 2.2.2 Condition 2. The action the provider takes is intended to:
- (a) enable or encourage the group to overcome or minimise that disadvantage; or
 - (b) enable or encourage the group to participate in that activity; or
 - (c) meet the group's different needs.
- 2.2.3 Condition 3. The action the provider takes is a proportionate way to increase participation, meet different needs or overcome disadvantage. This means that the action is appropriate to that aim and that other action would be less effective in achieving this aim or is likely to cause greater disadvantage to other groups.
- 2.3 This means a u3a seeking to rely on this exception to establish or maintain a men only group must be able to show that the men with whom it engages are disadvantaged as compared to women. It is unlikely that this would be the case, or (absent specific evidence to the contrary) that there is a disproportionately low level of participation in the u3a by men, or that they have different needs from the service the u3a provides compared to women.
- 2.4 So this exception is unlikely to apply in most cases.
- 2.5 Even if a u3a could satisfy Condition 1 (for example if there was strong evidence that men were under-represented within that specific u3a as compared to women) and Condition 2, it would still need to prove that setting up or maintaining a men only group was a proportionate response to male under-representation. This means proving that some other action (for example targeted advertising and explanation of its services) would be less effective in encouraging male participation, and / or would be likely to cause greater disadvantage to other groups.
- 2.6 Generally speaking, the establishment or maintenance of a permanent men only group within a u3a would be disproportionate and would not satisfy the statutory tests for positive action.

3. THE CHARITIES EXCEPTION

- 3.1 The charities exception applies to charities which restrict the provision of charitable benefits to persons who share a protected characteristic. Doing so will be lawful if the following statutory tests are met:
- 3.1.1 The person acts in pursuance of a charitable instrument and
 - 3.1.2 The provision of the benefits is:
 - (a) a proportionate means of achieving a legitimate aim, or
 - (b) for the purpose of preventing or compensating for a disadvantage linked to the protected characteristic
- 3.2 The exception allows a charity to limit its benefits to people who share a protected characteristic if (a) the charity's governing document refers expressly to the restriction of benefits to a group sharing a protected characteristic and (b) that restriction can be justified using either of the following tests:
- (a) Test A Tackling disadvantage. This test is met if a charity's aim is to tackle a particular disadvantage faced by people who share a protected characteristic.

- (b) Test B Achievement of a legitimate aim. Test B applies where a charity is not tackling a particular disadvantage but is seeking to achieve some other legitimate aim in a fair, balanced and reasonable ('proportionate') way.

3.3 The charitable object of the Third Age Trust is:

"The advancement of education and, in particular, the education of older people and those who are retired from full time work, by all means including associated activities conducive to learning and personal development"

3.4 The model constitution used by local u3as contains the same charitable object.

3.5 These objects do not restrict charitable benefit by reference to a protected characteristic at all. Instead the governing document promotes the advancement of education generally, with a particular focus on the education of older and / or retired people. Even if the reference to the education of older people is interpreted as limiting charitable benefit to that group then the protected characteristic referred to in the governing document would be age, not sex.

3.6 The tests for justifying the restriction outlined above only apply where a charity's governing document allows the limitation of benefits to people who share a protected characteristic. As the governing document does not restrict its benefits to people who share a protected characteristic these tests will not be met.

3.7 So it is unlikely that any local u3a could rely on the charities exemption to justify the creation or maintenance of a men only group.

4. ONE OFF EVENTS

4.1 In limited circumstances, it may be lawful, in relation to an activity which is carried on for the purpose of promoting or supporting a charity, to restrict participation in that activity to persons of one sex.

4.2 Statutory guidance on the relevant legislation suggests that only fundraising events will be able to rely on this limited exception. The activity provided as an example is Race for Life: a women only event which raises money for Cancer Research UK.

4.3 But the Equality Act does not limit an activity to a fundraising activity.

4.4 It could therefore be argued that an activity whose aim was to encourage engagement with and further the progress of the charity could be restricted to men only. On this basis a single event for men only could in principle be arranged provided that its purpose was to promote the charity in general and that it was designed specifically to promote engagement in the other services and activities of the u3a.

4.5 A permanent group restricting membership to men only would not be able to rely on this exception.

5. SUMMARY

5.1 Since none of the statutory exceptions apply, the establishment or maintenance by a u3a of a club which is completely restricted to one sex would most likely be unlawful, exposing the u3a to the prospect of legal action by affected members (most likely women who have been excluded).

6. EXAMPLES OF THE EXCEPTIONS IN PRACTICE

6.1 For completeness, set out below are some examples of organisations which do restrict the provision of charitable benefit on the basis of protected characteristics, and why this is likely to be lawful, by reference to the statutory exceptions set out above.

6.2 The National Federation of Women's Institutes of England, Wales, Jersey, Guernsey and the Isle of Man (WI)

6.2.1 One of the main charitable objects of the WI, as outlined in its governing document is "to advance the education of women and girls for the public benefit".

6.2.2 The organisation was founded to tackle the disadvantages faced by women. Originally it was in relation to their involvement in food production during the First World War but has included emphasising the importance of women jurors, magistrates, and police as well as campaigning for equal pay for equal work and for greater education about screening facilities for cervical cancer.

6.2.3 So the WI is probably able to restrict its benefits to women only on the basis of the charities exception.

6.3 Girls' and boys' schools as well as women's colleges

6.3.1 The legislation provides for a specific exception for single-sex educational institutions

6.3.2 An educational institution does not therefore contravene the legislation by restricting admission to students of a single sex.

6.4 Single sex sports clubs

6.4.1 As with educational institutions, there is a specific exception under the legislation for sport.

6.4.2 Under this exception it is permissible to limit participation in a gender-affected activity to members of a single sex. A gender-affected activity is defined as "a sport, game or other activity of a competitive nature in circumstances in which 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 events involving the activity".

6.5 Groups for people from ethnic minority backgrounds

6.5.1 The majority of these organisations will benefit from the charities exception as the charity will have limited its benefits to people who share the protected characteristic of race / ethnicity and they will be seeking to tackle a particular disadvantage faced by people of colour – for example, in the case of the National Black Police Association this is to promote good race relations and equality of opportunity within police services and wider community.

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