

MODULE

3

Teaching guidance and handouts

Employment and discrimination: developing confidence and getting organised



lawforlife

foundation for public legal education

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Introduction

This training resource has been developed by Law for Life: the Foundation for Public Legal Education, together with our award-winning information service Advicenow (www.advicenow.org.uk).

Law for Life is a charity dedicated to ensuring that people have the knowledge, confidence and skills needed to deal with law-related problems. The resource, intended for use with intermediaries in community organisations, focuses on the development of legal capability. However, please feel free to adapt the modules to suit the needs of any groups you work with.

Who are intermediaries?

Intermediaries are people who work in organisations whose service users are seeking help to deal with problems which may have legal dimensions. The intermediaries may be paid staff, students, volunteers or trustees and are unlikely to have any legal or advice training. This training aims to help them to spot a legal issue, know when the law can help, know how to find out what rights apply, and know where to get help. They can then help service users to organise and plan how to deal with their case, help with the practical steps of dealing with a law-related issue, build their confidence, support them to communicate effectively, and be organised. This training can also be used to support those who currently provide legal advice, but would like to build skills to teach public legal education.

What is legal capability?

At Law for Life we think about legal capability as the personal attributes that someone needs in order to deal effectively with law-related problems. These capabilities include or encompass knowledge, skills and attitudes. The concept of legal capability is explicitly about empowerment. It aims to transform, through education,

people's knowledge and understanding of their legal rights and their capacity and willingness to enforce them. This is distinct from and goes beyond having specific knowledge of legal systems and processes. If you have legal capability it means you can identify potential law-related problems as they arise, find information to help you understand the problem, and take steps to deal with it.

Training overview

This training resource contains handouts and guidance notes to be used in conjunction with the handouts. Three different legal topics have been paired with particular skills to form each module. They are:

- 1 Finding out about the law:** where to get information and help (consumer contracts)
- 2 Housing disrepair:** assessing courses of action and developing communication skills
- 3 Employment and discrimination:** developing confidence and getting organised.

The modules are designed to be taught consecutively but you can easily adapt them in order to teach them independently. Each module has specific learning aims, which you should use to guide the delivery of the module, as well as detailed guidance notes for each activity.

We hope we have anticipated many of the issues and questions which may arise as you prepare to deliver these modules, but please contact us if you need additional support. Any questions about the modules can be directed to info@lawforlife.org.uk.

Tara Mulqueen and Tony Thorpe
Authors

Employment and discrimination: developing confidence and getting organised



Background

This session deals with practical legal questions of employment law, specifically to do with discrimination issues and reasonable adaptations. It provides the opportunity to develop specific skills around getting organised in order to manage law-related problems and foster the personal skills, such as confidence and motivation, necessary to persevere.

Key learning points and outcomes

The session is designed to help group members:

- understand the basic legal rules of discrimination in the context of employment,
- identify and develop key organisational skills to effectively manage law-related problems,
- identify capability needs and ways to support clients,
- evaluate and devise a strategy for developing the personal skills necessary for persevering with a law-related problem.

Running time

2 hours – 2¼ hours



Equipment and preparation

Equipment

Try to have the following items available:

- name tags or labels on which people can write their name;
- a flip chart or white board, with markers;
- sheets of flip chart paper and markers for small group use;
- a supply of adhesive tack to display group chart and posters.

Internet access

Group members will need access to a laptop, tablet or PC, to enable them to work in small groups of two or three. Check the availability of internet access in the teaching room. You will also need a computer, projector and screen for your own use at the front of the class.

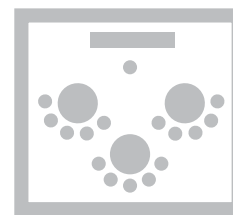
Towards the end of the final activity, you will ask group members to comment on the strengths and weaknesses of a number of real websites. It would be helpful and save time to set up the internet on each computer, with the five sites already open in separate tabs.

Photocopying

Duplicate the following pages, in advance:

- **Treated badly or discrimination?** (see page 15)
1 per person
- **Lawful or unlawful discrimination?** (see page 16)
1 per person
- **Lawful or unlawful discrimination? (Answers)**
(see pages 17–18)
1 per person
- **Types of discrimination** (see page 19)
1 per person
- **The experience of discrimination** (see page 20)
Enough copies for groups of 3–4 to each have a client
- **Dealing with discrimination** (see page 21)
1 per person
- **Getting organised** (see page 22)
1 per person
- **Seven steps: how to solve a legal problem** (see page 23)
1 per person

Room layout



If possible, we suggest that group members sit in pairs or small groups in a semi-circle arrangement, with access to tables, cabaret-style.

Breaks and timing

We indicate how much time the group is likely to require at the start of each activity. We suggest that you give the group a short break between Activity 1 and 2. Groups may vary in the amount of time they need to complete these tasks. There is enough material for at least two hours, but potentially more. You might consider running the activities over more than one session, based on the needs of your group.

Opening (Option 1): Introductions and practical matters

10–15 minutes



- 1** If this is the first time that the group has met, we suggest that you open by introducing yourselves and asking group members to do the same; giving their name and perhaps brief details of their work role, location, and their reason for coming along.

It may be useful to make a note on the board/flip chart of how group members are hoping to benefit from the course, and to comment on any patterns or characteristics that seem to emerge. You can use this list to help guide the discussion at the end of the module or put it up on the wall and refer to it.

- 2** Briefly run through the module outline with the group, using it as an opportunity to clarify the aims and objectives and to check on how they link to group members' needs and wishes. Clarify and deal with any misfit between what the group is hoping to get from the course and what you are able to provide.
- 3** Stress that the sessions do not amount to a legal training course, but focus instead on developing legal capability. You are not expecting group members to have or to develop specialised legal knowledge.

- 4** Encourage group members to engage in the sessions by suggesting that they ask questions and seek clarification preferably when their query arises. Stress that you would like members to share their experiences and for the learning experience to be informal.

In some circumstances you may be working with a group who will use the sessions as a basis for training a further cohort of volunteers. In this situation, you may like to explain that you will be looking at questions of training strategy in addition to the learning points and outcomes of the module listed above.

- 5** Finally, check and clarify with the group any practical arrangements, such as break and end times, refreshment arrangements (if any), the location of toilets and fire exits.

Opening (Option 2): Revision

10 minutes



1 We suggest that you open the session with a brief summary of the main ideas covered in the previous session, followed by an outline of the work that you intend to cover today.

2 Explain that the previous session's work was concerned with dealing with legal problems associated with disrepair, and focused on communication skills

The group will also have given thought to choosing what kind of evidence to keep and present, and who to contact for support, in addition to reinforcing their online research skills.

3 Explain that in this session you will be furthering this discussion of 'dealing with' the law with a focus on issues of employment and discrimination.

Clarify with the group any practical arrangements, such as break and end times.

Activity 1:

Treated badly or discrimination?

15 minutes



- 1 This first activity provides the opportunity to discuss the fact that being badly treated or unpleasant behaviour does not necessarily amount to discrimination. It also begins to create a framework for distinguishing between being treated badly and discrimination.

Distribute the hand out **Treated badly or discrimination?** (see **page 15**) and give participants a few minutes to think about the two different scenarios presented. The first describes discrimination and the second describes being treated badly.

Participants will most likely identify this without too much difficulty. Once they have answered, try to flesh out the difference between the two. Ask: when is being treated badly discrimination and when is it not?

Activity 2:

Lawful or unlawful discrimination?

30 minutes



- 1 Once the group has decided how discrimination differs from being treated badly, move on to discussing the difference between lawful and unlawful discrimination. Not all forms of discrimination are illegal: it may depend on the nature of the discrimination, the reason it is being done, and the kind of organisation that is doing it.

Distribute the hand out **Lawful or unlawful discrimination** (see page 16). Participants can work in pairs or small groups to go through the list of various instances of discrimination. Ask them to sort them into three piles: lawful discrimination, unlawful discrimination and undecided. This should take no more than 10 minutes.

- 2 Once participants have reached their answers, go through each scenario in turn. The facilitator or a note-taker can keep track of the factors which emerge in the discussion to distinguish between lawful and unlawful forms of discrimination.

When you have finished going through the exercise, provide a definition of unlawful discrimination:

Unlawful discrimination is said to have occurred when a person has been treated less favourably because of their age, disability, gender reassignment, marriage, pregnancy and maternity, race, religion and belief, sex or sexual orientation.

The law calls the characteristics listed in this definition 'protected characteristics'.

- 3 There are further distinctions between different types of discrimination. Next, distribute the hand out **Types of discrimination** (see page 19) and match the cases with the different types of discrimination listed.

- **Indirect discrimination** is when there is a policy, practice or rule which is the same for everyone but may disadvantage someone with a protected characteristic, and the employer does not have a good reason for the policy.
- **Discrimination by association** occurs when someone is discriminated against because they associate with someone who has a protected characteristic.
- **Victimisation** occurs when someone is treated badly or less favourably because they have attempted to assert their rights under the Equalities Act 2010 or they have helped someone else to do so.
- **Harassment** is when someone is saying or doing things (unwanted conduct) because of who you are that you find offensive, humiliating, frightening, distressing or sexually inappropriate, or discriminates against you because you refused to submit to sexual harassment.

Looking at these examples should enable participants to notice some basic features of each type of discrimination. This is important as instances of discrimination may not at first appear to be discrimination – particularly in cases of indirect discrimination and discrimination by association.

Activity 3:

30 minutes



The experience of discrimination – role play

- 1** This activity is built around a real case involving someone whose employer only allowed her to work in the stockroom because of her prosthetic arm. The activity begins with a role play.

Ask participants to work with a partner – one person in each pair should receive the hand out **The experience of discrimination** (see page 20). Explain to the group that the focus of the role play is on the effects of discrimination and the potential barriers to dealing with discrimination. If necessary, remind them that whoever represents the person with a disability in the role play should do this sensitively and without, for example, pretending that they have a prosthetic arm. The person playing the volunteer will need to ask questions to find out what has happened and work out what kind of support the client will need.

Give pairs no more than 10 minutes to conduct their role play interviews. Volunteers should try to identify what the problem is and how best they can support the client.

Once the interviews are finished, bring the group back together for a discussion. Ask those playing the client to talk about how they felt and what kind of support and assistance they were looking for from the volunteer.

Then, ask volunteers to report on their experience of the interview as well. What kind of problem did the client have? What suggestions and plans did they make for moving forward?

Feedback from the pairs should highlight particularly how the client felt

about the experience of discrimination, and how the volunteer supported them. Encourage discussion using questions, such as:

- How would you describe these feelings? Group members should identify some of the following: anger, low self-esteem, low confidence, unmotivated and/or depressed.
- How do you think these feelings may affect the client's ability to deal with the situation?
- What personal qualities does a client need to deal with a difficult and complicated situation such as employment discrimination?

Drawing on the role play experience, ask the group to come up with a few specific suggestions about how to provide support for a client who is experiencing these feelings. These may include:

- Allow the client time to explore their feelings without making judgement
- Offer a moment for the client to catch their breath or have a drink of water.
- Use the opportunity to review the pros and cons of making a complaint.

Pros: may end the discrimination, may be able to take the claim to an employment tribunal if the employer does not follow the correct procedure or take action. Not following a grievance procedure

can also result in a 25% reduction in any award from a tribunal.

Cons: the process may be stressful, it may damage work relationships and it may not be practical if it is not something which can be easily resolved or if you are not planning to remain in this employment. Suggest they talk it over with a friend or helper.

- If the effects have become serious, it may be best to suggest finding counselling or a GP to assist them.
- Low-confidence and self-esteem can make the steps for dealing with discrimination very daunting. Can they be broken down into more manageable bits? Is there someone else who can help them along and keep them motivated as they deal with the problem?

2 Next, tell the group how the case turned out in real life. This person took their case to a tribunal. They were awarded an £8000 settlement. The tribunal found that she had been harassed because of her disability and that she had been unfairly dismissed. However, they did not find that she had been subject to direct discrimination.

Drawing on the previous exercise, ask participants whether or not they agree with this decision.

Activity 4: Dealing with discrimination

40 minutes



- 1** For the final activity, pass around the handout **Dealing with discrimination** (see **page 21**). This activity is designed to encourage participants to work through the practical steps of dealing with a discrimination issue in an employment context, particularly through the use of a grievance procedure.

Give participants a few minutes to read the scenario. Ask the group to explain what they think is happening. They should identify that Lana appears to be experiencing discrimination because of her pregnancy. Also ask them how Lana seems to be feeling.

Next, ask the group to think about what the next steps might be. They will need to do some internet research to find out how Lana could proceed in this situation. Before doing any research, it will help if the group identifies that Lana will need to use the grievance procedure at her workplace.

Advicenow has a number of resources for identifying and dealing with workplace discrimination. These can be found by searching the site using the term 'discrimination'. If a projector is available, you could load a few sites in advance and project them on the screen. You could also pre-load the sites on the laptop computers being used by participants.

Allow participants, working in small groups of 3–4, about 20 minutes to research the law and come up with a plan of action for Lana.

The handout asks each group to produce a list of 7 steps, but this is only a general guide – some groups

may come up with fewer than this, or may combine steps. Ask each group to write the next steps they would suggest to Lana on large sheets of flipchart paper.

When everyone is ready, ask them to present their suggestions to the full group. Discuss the suggestions that each group makes and compare answers.

Each group should include at least some the following suggestions in their action plans, but they may be combined in many different ways. If any of these are not included, then make sure you mention them.

Lana should consider doing the following (but this is not an exhaustive list):

- Check her employment contract or handbook for details of the grievance procedure.
- Check with her trade union about how best to proceed and to get their support.
- Keep a record of each instance of discrimination she experiences.
- Consider speaking informally to her colleagues before starting the grievance procedure. Supportive colleagues may be able to provide moral support and also evidence that they are working her usual shifts in her place.
- Draft a letter to her employer in accordance with the grievance policy.
- Check any time limits for bringing the claim and make sure she is within them.

- Obtain a medical certificate which proves her pregnancy.
- Save any records of antenatal appointments.
- Make a note of when she has spoken to her manager about the pregnancy and when the discrimination began, so that she can construct a timeline.
- Find out about her rights by talking to an advisor or doing some research online.
- Speak to someone in the HR department, if there is one, rather than approaching her manager directly, particularly if she feels intimidated.
- Think about what her employer might say as a defence and plan her response in advance.
- Think about what she would like to achieve in the situation and how she might achieve it.
- Find a colleague or union representative to accompany her to the grievance meeting.

2 After each group has presented, summarise and reinforce the discussion by going over the handout **Get organised** (see **page 22**) which emphasises some best practices when dealing with a law-related problem. This can be followed with the handout **Seven steps: how to solve a legal problem** (see **page 23**).

Closing:

Reflection questions

10 minutes



Now that the group have completed all of the exercises in this module, invite them to discuss the following questions:

- How do you think the skills and legal information we talked about today could be useful to your clients or the people you work with?
- How would you support them to develop these skills and prevent future problems with law-related issues?

Treated badly or discrimination?



Eric came to England from Poland several months ago to find work. He has a job working on a farm which he really loves. He gets on well with his employer and colleagues and local people generally. However, he has experienced some unpleasant situations at two local shops.

Had Eric been treated badly or is he experiencing discrimination?

Shop 1

This is the main shop in the centre of the village where most people go to buy provisions. Eric tries to shop there sometimes, but every time he goes into the shop to buy something the shop keeper refuses to serve him saying that he won't serve Polish people. Eric is forced to go elsewhere to do his shopping.

Shop 2

There is another shop a bit closer to Eric's flat. He likes to go there because it sells his favourite type of biscuit. The shopkeeper is often rude and unfriendly toward Eric, making him apprehensive about shopping there.

Eric gets fed up with this and wonders if it is because he is Polish and the shopkeeper doesn't like Polish people.

He mentions it to some English friends and the owner of the farm where he works. Everyone tells him that the shopkeeper is a very grumpy and unpleasant person who is always rude to everyone.

Lawful or unlawful discrimination?



	Lawful, unlawful or undecided?
A An applicant is not selected for a job interview because of her ethnic background.	
B An applicant is turned down for a job because she does not have the required professional qualification.	
C A job requires the successful applicant to visit the company's clients from time-to-time. A disabled applicant is not selected for interview as she does not have a driving licence.	
D A job applicant is unsuccessful because the employer believes that he is gay – in fact, he is not.	
E A young Muslim woman from Bangladesh asks for help about domestic violence from a charity that is set up to help Christian women. They say that they cannot help her because she is not a Christian.	
F A restaurant manager tells a waitress not to serve lesbian or gay customers, and to tell them that the restaurant is full.	
G A woman phones a prospective employer to ask for a job application form. She is English but her husband comes from Nigeria and she has an African surname. When she gives her name she is told that in fact the job is no longer available. The employer does not want to employ African staff.	
H A young man is told that he cannot work in the public areas of his workplace because he has very noticeable tattoos.	
I A man who is deaf applies for a job for which he is well-qualified. His prospective employer insists that all candidates are interviewed first over the telephone, even though no telephone work is required in the job.	
J A local yoga studio tells a pregnant woman that she cannot attend the advanced yoga class.	

Lawful or unlawful discrimination?

(Answers)



A An applicant is not selected for a job interview because of her ethnic background.

This will almost certainly be **unlawful** discrimination. However, there are a small number of circumstances when a person's ethnic background may be regarded as an occupational requirement, making discrimination lawful. The owner of a Chinese restaurant, looking for a new waiter, is entitled to advertise for Chinese applicants only, and a local council seeking someone to work with the Bengali community can insist on applicants coming from a similar background.

B An applicant is turned down for a job because she does not have the required professional qualification.

Lawful discrimination.

C A job requires the successful applicant to visit the company's clients from time-to-time. A disabled applicant is not selected for interview as she does not have a driving licence.

This is almost certainly **unlawful** discrimination unless it can be shown that the possession of a driving licence is absolutely essential for the job and that it is not possible to make reasonable adjustments to accommodate the applicant.

D A job applicant is unsuccessful because the employer believes that he is gay – in fact, he is not.

This is **unlawful** discrimination. It makes no difference that the employer was mistaken in his or her assessment of the candidate.

E A young Muslim woman from Bangladesh asks for help about domestic violence from a charity that is set up to help Christian women. They say that they cannot help her because she is not a Christian.

This is **lawful** discrimination; religious charities are allowed to restrict their clients to members of their own religious group.

F A restaurant manager tells a waitress not to serve lesbian or gay customers, and to tell them that the restaurant is full.

This is **unlawful** discrimination.

(continued)

G A woman phones a prospective employer to ask for a job application form. She is English but her husband comes from Nigeria and she has an African surname. When she gives her name she is told that in fact the job is no longer available. The employer does not want to employ African staff.

This is **unlawful** discrimination

H A young man is told that he cannot work in the public areas of his workplace because he has very noticeable tattoos.

This is **lawful** discrimination – as long as the policy is applied consistently, for example to both men and women.

I A man who is deaf applies for a job for which he is well-qualified. His prospective employer insists that all candidates are interviewed first over the telephone, even though no telephone work is required in the job.

This is almost certainly **unlawful** discrimination as the job itself does not generally require the use of a telephone. If the organisation wishes to carry out telephone interviews, they should make a reasonable adjustment for this applicant.

J A local yoga studio tells a pregnant woman that she cannot attend the advanced yoga class.

This is **lawful** discrimination. A service provider can treat a pregnant woman differently if there are health and safety reasons for doing so. However, it is only lawful if they also treat others with physical conditions differently for health and safety reasons.

Types of discrimination



Draw an arrow linking each scenario in the right hand column with the type of discrimination it shows listed in the left hand column.

Indirect discrimination

Jessop's child has a severe disability and sometimes requires additional care, but his employer has denied him flexible working, even though other employees have flexible hours.

Discrimination by association

May, a wheelchair user, is referred to with an inappropriate nickname by her boss and colleagues.

Victimisation

An employer has provided a prayer room for Muslim employees, but keeps it locked. They are required to ask for the key and sign in and out when they want to pray, and they can only go in one person at a time.

Harassment

Sofie has started a grievance procedure at her workplace because she believes she is being discriminated against. Since starting the procedure, her hours have been cut in half and her boss will not speak to her.

The experience of discrimination — role play



Client cue card

You think you have been experiencing discrimination at work because of a disability. You were born without your left forearm and wear a prosthetic arm.

The company you work for is a clothing store. Initially they were very accommodating but then, one day your manager said that you should no longer work on the shop floor because you have to wear a jumper to cover the prosthesis.

They claimed that this did not fit their 'look policy'. Since then you have only been allowed to work in the stock room. They have said you have to continue working in the stock room until new uniforms arrive.

You don't know what to do. This has made you feel bullied and very low. You feel as though your disability has become the most important thing about you at work.

You are also very afraid about losing your job. You really need the income at the moment and you don't want to rock the boat. But at the same time, this situation is humiliating and emotionally damaging for you.

Dealing with discrimination



Lana works as a maid in a large hotel. She has recently become pregnant. She has already told her employer about the pregnancy and requested statutory maternity leave. In the meantime, she is attending appointments once a week for antenatal care and has needed to miss work to attend them. She has also been sick a few times and arrived late to work as a result.

Lana usually does five shifts every week, but this week she has only been given two shifts. When she asked her boss why her hours were less, her boss replied that it was only because they were having a slow week at the hotel. The next week her hours were similarly reduced.

Lana's colleagues do not appear to have had their hours reduced at all. Lana suspects that she is being discriminated against because of her pregnancy, but she doesn't know what to do. She is afraid of approaching her manager because she does not want to lose her job entirely. She really needs to keep working, especially with the baby coming.

- Is an employer entitled to reduce the hours of an employee who is pregnant?
- What are an employee's rights in this situation?
- Lana believes that she is suffering unlawful discrimination. How would you suggest she goes about getting organised in order to deal with this issue? What steps would you advise her to take to deal with the situation?
- Create a plan of action divided up into no more than seven steps.

Get organised!



In order to deal with a law-related problem, it is important to get organised. You need to keep records of what went wrong and how you tried to solve it. You also need to gather evidence to prove that you are in the right.

For example:

- Check if there are time limits within which you must take action. For example, the date by which you must report a problem to the seller or apply to backdate your benefits, or to put in a claim to a tribunal.
- Keep copies of all the letters or emails you send and receive.
- Make a note of everything you do to solve the problem. Write down who you spoke to, what they said, what you or they were going to do next, and when by.
- If it is your word against somebody else's, write down your account of what happened, date it and keep it safe.
- Take copies of any receipts, invoices, bank statements etc.
- Recording things properly and getting all your evidence together can be crucial to solving your problem. Not only will it be very helpful for anyone trying to help you, but it could also make all the difference if, at a later date, you have to make a formal complaint or go to court.
- Hot tip! If you hand over documents or evidence to another person, company or organisation make sure you get a receipt and keep it safe.

Kirsty's story

My mum was sick and in and out of hospital for a while and it played havoc with her care package. Because she wasn't well, I had to try and sort it out for her.

But I learnt something really useful. Now when I speak to someone at social services, at the end of the conversation I always repeat anything they have agreed to do and ask how long they think it will take. If they say a week, I write it down and phone back a week later. I ask to speak to the same person and ask what the progress is. It stops me from being passed from person to person and nobody really dealing with my problem. If they don't want me to call back again, they will solve it for me. **Kirsty, Ferryside**

Seven steps: how to solve a legal problem



Step 1 What's your problem?

Try to be clear about the nature of the problem and how it came about.

Step 2 Know your legal rights and responsibilities

Make sure you understand your legal rights and responsibilities, along with the ways that are available for reaching a solution.

Do your best to ensure that the information you have is accurate.

Step 3 Understand your options

Be clear about what you want. Is it an apology, a review, compensation, or something else?

Step 4 Know who to speak to

Work out who you need to speak to in order to solve the problem. It could be customer services, or someone in a different organisation.

Step 5 Communicate effectively

Do your best to communicate with people as clearly and calmly as possible. Know your facts, stick to what is relevant and keep calm! Make notes, including the name of the person you talk to. Ask if they say something you don't understand.

Step 6 Get organised!

Prepare yourself in advance, keep copies of every document, and know the time limits by which certain things must be done.

Step 7 Know when to get help

If you are not sure what to do or how to do it, if you are confused or feel you are not getting anywhere, get help.

For full guidance, please refer to this Advicenow guide:

www.advicenow.org.uk/how-to/seven-steps-to-solving-a-problem

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Law for Life is a charity dedicated to ensuring that people have the knowledge, confidence and skills needed to deal with law-related issues.

It incorporates Advicenow – an independent, not for profit website providing helpful information on rights and legal issues (www.advicenow.org.uk).