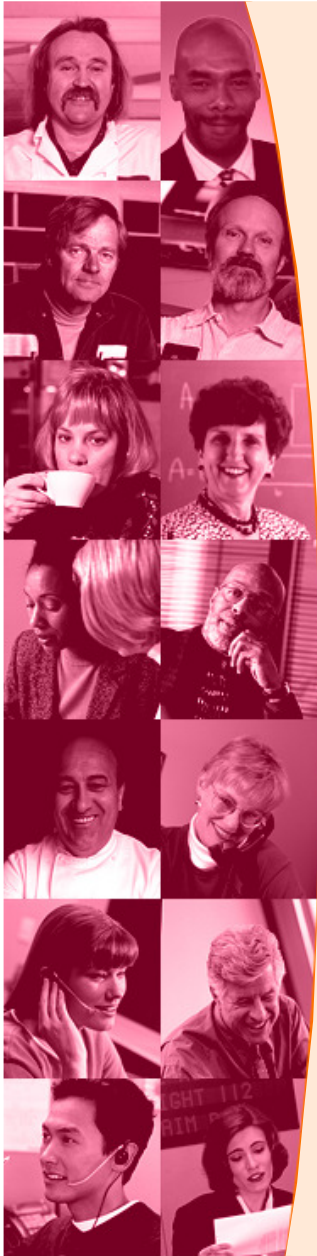


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Multiple discrimination and positive action

Sally Brett
Senior Equality Policy Officer



Region

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Multiple discrimination

- TUC argued for multiple discrimination to be recognised in Act
- Concern employer could point to comparator who shares one characteristic to defeat claim
- Could be addressed by removing specific requirements for comparator

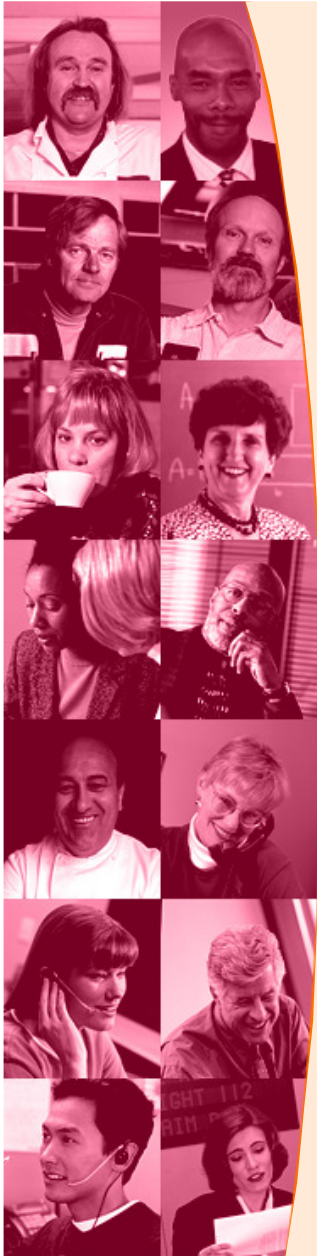


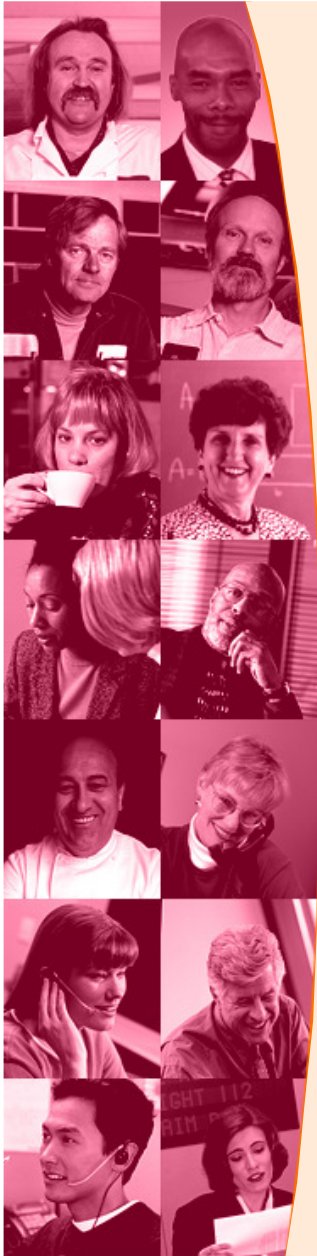
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Equality Act 2010

S.14 'Combined discrimination: dual characteristics':

"A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics"





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But...

- Coalition Government announced in Budget 2011 that s.14 will not be commenced

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What would impact of s.14 been?

- Recognition of multiple discrimination
- CAB evidence suggests 7.7% claims involve more than one characteristic
- Could have helped e.g. gay men working in childcare, women with young children
- But what if 3 characteristics e.g. young Muslim men?
- What if harassment or indirect discrimination also involved?



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Multiple discrimination without s.14

- Claims will be brought as multiple single characteristic claims as now
- ETs should focus on reason for treatment and not constructing comparators to defeat claims
- Fact we now have a single Equality Act may further encourage purposive approach



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Multiple discrimination without s.14

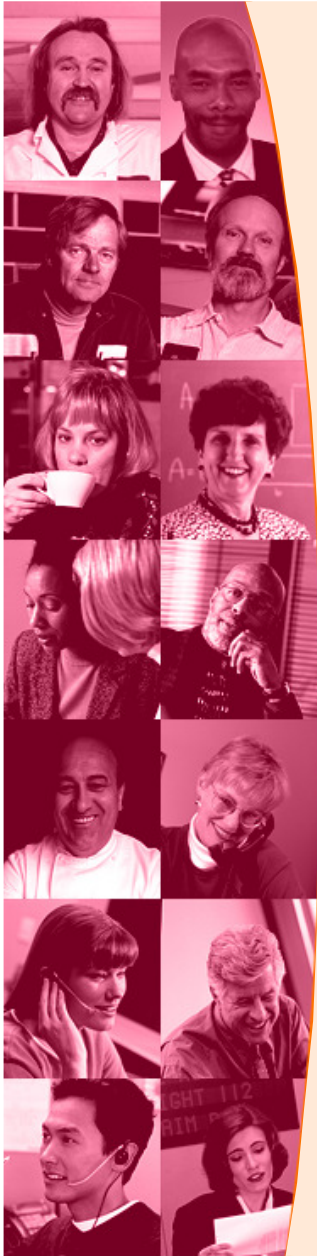
- Cox J, “the nature of discrimination is such that it cannot always be sensibly compartmentalised into discrete categories” (*Ministry of Defence v Debiq* [2010])
- Ensure recognition of multiple discrimination in employer equal opps policy and in practice
- Single Equality Duty encourages inclusive approach in public sector



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Positive action

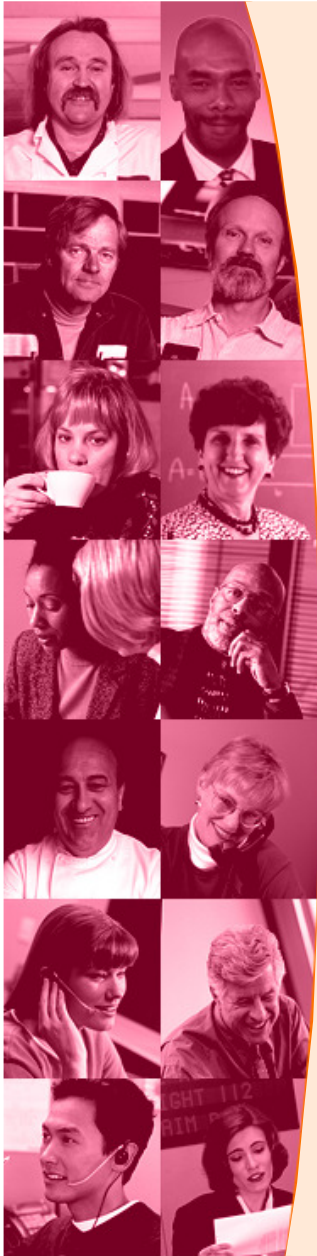
- **SDA and RRA** – ‘discriminatory training’ provisions allowed training or encouragement for under-represented groups
- **Age/RB/SO Regs** – ‘exceptions for positive action’ allowed training or encouragement to prevent or compensate for disadvantage
- **Age Regs** – allowed justification of direct age discrimination
- **DDA** permitted more favourable treatment of disabled people



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Equality Act 2010

- **S.158 Positive action: general**
Applies if a person reasonably thinks there is disadvantage, different needs or under-representation connected to a protected characteristic
- Allows any action which is a proportionate means of minimising disadvantage, meeting different needs or improving participation



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Equality Act 2010

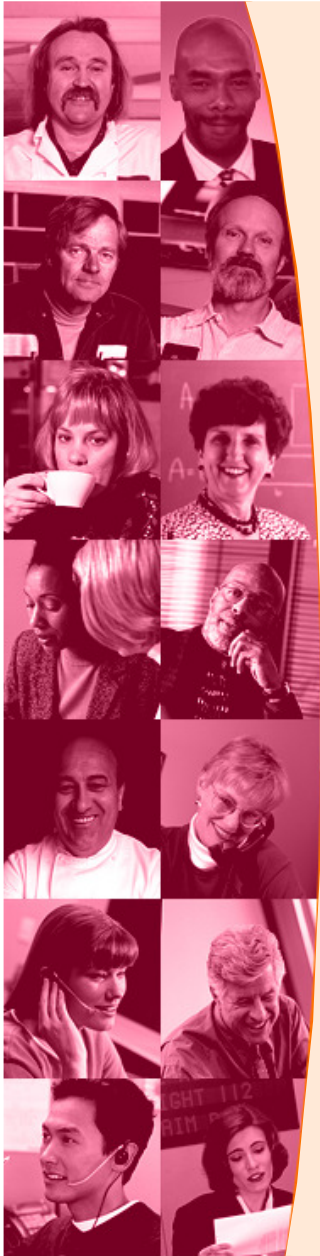
- **S.159 Positive action: recruitment and promotion**
- Allows someone to be treated more favourably because they have protected characteristic if:
 - to minimise disadvantage or increase participation
 - they are as qualified as rivals
 - no blanket policy of treating people with protected characteristic more favourably and proportionate



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Will there be more positive action?

- Equality Act 2010 is more positive about positive action e.g. appears in Part 11 'Advancement of Equality'
- Applies to all characteristics
- s.13 states more favourable treatment of disabled people is not unlawful discrimination
- Still able to justify direct age discrimination



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Will there be more positive action?

- Positive action is optional
- Public sector equality duty in Part 11 suggests some compulsion
- S.149 explains having due regard to advancing equality of opportunity means considering need to:
 - minimise disadvantage
 - meet different needs
 - encourage greater participation