

Discrimination and mental health

Equality Act 2010

This factsheet looks at what to do if someone has treated you unfairly because of your mental illness. This factsheet explains the Equality Act 2010. It explains how it might apply to you when you are at work, applying for jobs or using services. The Equality Act applies in England, Scotland and Wales.



KEY POINTS

- The Equality Act 2010 protects disabled people from unfair treatment. This includes many people with a mental illness.
- If someone has treated you unfairly, that is discrimination.
- The Equality Act 2010 explains what a disability is. If the definition covers your mental illness it protects you from discrimination. You are also protected from harassment or victimisation because of your mental illness.
- You may have the right to get your employer to make changes to your job due to your disability. These changes are 'reasonable adjustments'.
- The Equality Act protects you from discrimination at work. It also protects you when you are applying for jobs.
- The Equality Act protects you when you use services. Nobody should face discrimination due to their mental health. This includes when trying to get housing, education or any other services.
- The Equality Act can also protect carers of people with a mental illness.

This factsheet covers:

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1. Does the Equality Act protect me because of my mental illness?

The Equality Act protects certain groups of people from unfair treatment. Unfair treatment is 'discrimination'.

The Equality Act protects you from discrimination because of your:

- age,
- race,
- sex,
- sexual orientation,
- pregnancy,
- gender reassignment,
- religion or belief,
- marriage or civil partnership, or
- disability.

These are known as "protected characteristics"¹.

This factsheet focuses on mental illness as a disability. The Equality Act also protects you from discrimination because of any of the characteristics.

Employers and services in England, Wales and Scotland must follow the Equality Act. This means that the Act protects you in work, education or housing. It also protects you when you are trying to buy goods or use facilities or services. Services include:

- shops,
- petrol stations,
- hairdressers,
- hospitals,
- libraries,
- gyms, and

- estate agents.

What does “disability” mean?

The word “disability” has a wide meaning under the Equality Act. Even if you do not call yourself “disabled” in everyday life, the Act may still protect you.

The Equality Act says you have a disability if you have a:

‘physical or mental impairment which has a substantial and long-term adverse effect on your ability to carry out normal day-to-day activities’.²

This sounds quite technical. We explain each term below.

What is a “mental impairment”?

Most mental illnesses will be a mental impairment. The Equality Act does not define impairment. The guidance to the Equality Act states that the term ‘should be given its ordinary meaning.’³ This will include the effects or symptoms of the illness, as well as the diagnosis.

Side effects of medication can also be an impairment. You may take antipsychotic medication that makes you tired. This tiredness could be a ‘mental impairment’

What does “substantial and long-term” mean?

The word ‘substantial’ means that the effect that your illness has on you must be more than small or minor.

Your illness will be ‘long-term’ if it:

- Has lasted for at least 12 months,
- Is likely to last for at least 12 months, or
- Is likely to last for the rest of your life.

What are “normal day-to-day activities”?

This looks at whether your mental illness makes it harder for you to do things that a lot of people do in everyday life.

Example*

Sarah has a mental illness and finds it harder to remember things. She struggles to concentrate, plan ahead or sleep. This means she finds it more difficult to get up in the morning, plan her journey to work and go shopping. These are just some examples of things that could be day-to-day activities.

Reasonable adjustments

The way your workplace is set up may make it hard for you to work. This could also be true of a service you use. If this is because of your disability, the service or employer has to make reasonable adjustments. This is when a service or employer makes changes to a service or job to make things easier for you. The Equality Act says that a reasonable adjustment can include:

- changing policies or procedures,
- changing equipment,
- changing the location, or
- giving you aids such as extra support or equipment.⁴

However, there is no list of adjustments. What is reasonable for one organisation to offer may not be reasonable for another.

When deciding whether a change is reasonable, an organisation can look at:

- the cost of making the change,
- how much money the organisation has,
- how helpful the adjustment would be to you, and
- how practical it is to make the change.

They cannot justify not making a reasonable adjustment just because it costs a lot. An organisation is not allowed to charge you for the costs of an adjustment.⁵

Reasonable Adjustments at Work

Employers should make reasonable adjustments for disabled people who would otherwise find it hard to work or apply for jobs. There is no set list of what reasonable adjustments can be.

You could ask for some reasonable adjustments for your interview. They could include changing the room or the way the interviewer asks the questions.

At work, reasonable adjustments could include:

- allowing you extra time off work,
- allowing flexible working,
- changing your role, or
- offering counselling or mentoring.

Talk to your employer about how your condition affects you. You can discuss what would help you to overcome any problems. Your employer may refuse to make an adjustment that you think is reasonable. In this case you could consider taking action. See section 7 for further information on this.

Example*

Billy works for a large supermarket chain. He has to drive to work everyday and in the winter he does not finish work until it is dark. Billy has Post Traumatic Stress Disorder (PTSD). He finds it very difficult to drive home in the dark. This is because he gets bad flashbacks of things that have happened in his past.

Billy tells his manager, who knows about his mental health condition. His manager refuses to change his working hours in the winter. This would allow him to drive home while it is still light outside. The supermarket is large and it would be easy for his manager to arrange an earlier shift. However, his manager says he is being “over-sensitive”. This is likely to be a failure to provide reasonable adjustments. The employer could change his hours and it would help Billy.

I am getting treatment that stops my symptoms affecting my day-to-day life. Do I still have a disability?

Yes, but you need to be able to show that you need treatment or your mental illness would affect your daily life.⁶ You may need to show them medical evidence from your doctor.

Example*

Terry has depression and is getting counselling and takes medication. This controls his symptoms and helps him sleep. Without this treatment, he would not be able to sleep, which would stop him doing many day-to-day things. So the Equality Act still protects him.

What if my illness comes and goes?

You may have a mental health condition which comes and goes. This can mean your symptoms can change. The Equality Act protects people from discrimination if they used to have a mental illness. It also protects you if your symptoms have got better but could come back in the future.⁷

Example*

Mo recovered from depression three months ago. He has had depression many times before. He now has no symptoms, and he would like to return to work. Mo has recovered. His psychiatrist tells him that evidence suggests he may have another episode of depression in the next three years. The Equality Act protects Mo from discrimination. It protects him from discrimination by potential employers because of his past disability. He is also protected as a disabled person because his symptoms could return in the future.

What if I have a short-term illness?

Your doctor may think your illness will only last a short time. The Equality Act's definition of disability may not cover you.

Someone may have directly discriminated against you because they thought you were disabled. The Equality Act may protect you here. You may be able to take action. This is known as discrimination by perception. We explain the different types of discrimination in the next section.

What is not a disability in the Equality Act?

Regulations state that these conditions are not disabilities:

- Alcohol, nicotine or any other substance addiction. This does not include addiction caused by medical treatment. An example of this would be addictive drugs prescribed by a doctor.
- Starting fires.
- Physically or sexually abusing other people.
- Exposing private parts of your body in public, known as exhibitionism.
- Watching people who are carrying out intimate acts, known as voyeurism.
- Hayfever.
- Stealing.⁸

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2. What kinds of discrimination are there?

There are a number of different types of discrimination. The Equality Act protects you against:

- [direct discrimination](#),
- [indirect discrimination](#),
- [discrimination arising from a disability](#),
- [failure to make reasonable adjustments](#),
- [harassment](#) and
- [victimisation](#).

Direct Discrimination⁹

This is where someone treats you worse than others because of your disability. It can be hard to prove direct discrimination. You need to show that someone treated you worse than a person in the same situation who does not have a disability. This person is a “comparator”.

Example*

Louise has had bipolar disorder for all of her adult life. She tries to get a loan from a loan company, and tells them that she has a mental health condition. Without looking at Louise’s credit rating, the loan company decides not to give Louise a loan because they think that people with bipolar disorder are unable to control money. The loan company continues to give loans to people in a similar position to Louise but who do not have bipolar disorder. This is direct discrimination.

Indirect Discrimination¹⁰

This is where there is a rule, criteria or practice applies to everyone. But this rule makes it unfair for people with a disability. This will be discrimination unless the employer or service provider can justify it. They can do this if it is a “proportionate means of achieving a legitimate aim”. We explain this in section 4, below.

Example*

Erica has anxiety and irritable bowel syndrome. This means that she needs toilet breaks more often than her colleagues. Her employer has a policy that staff are only allowed a total of three toilet breaks a day. This policy applies to all staff. But it has a bigger effect on some disabled staff including Erica. This policy will discriminate against Erica unless her employer can justify it. To do this they need to show why they need this policy to run the service.

Discrimination Arising From Disability¹¹

This is where an employer or service provider treats you unfairly because of something relating to your disability. If they cannot show that why they need the policy this may be discrimination.

Example*

Roger has severe depression. He takes antidepressants which make him tired and he sometimes comes into work late. He explains this to his employer. His employer thinks that this is unacceptable and dismisses Roger.

This could be discrimination due to Roger’s disability. This is unless the employer can give good reasons for the discrimination. (We discuss this in the next section of the factsheet)

It could also be direct discrimination. This is because a mental impairment caused by taking medicine can be a disability.

Failure to Make “Reasonable Adjustments¹²

This is referred to in the Equality Act as ‘failure to comply with a duty to make reasonable adjustments.’¹³ We explain reasonable adjustments in section 1. It is a form of discrimination not to make reasonable adjustments. This is only if a service provider or employer knows or should know about your disability.¹⁴

Harassment¹⁵

This is when people behave in an aggressive or intimidating way towards you. If someone harasses you because of your disability this is discrimination.

Example*

Malia has paranoid schizophrenia and works in an office. Two of her colleagues call Malia “schizo” and draw and write abusive words and

pictures on her desk. Malia tells her employer about this, who ignores the situation. Malia's employer did not carry out the harassment, but the company is still responsible for harassment carried out by its staff.

Victimisation¹⁶

If you complain and people mistreat you this is victimisation. The Equality Act protects people who make a discrimination complaint. You should not face discrimination for trying to use your rights under the Act.

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3. Can discrimination be allowed?

Some kinds of discrimination are not allowed. A service cannot discriminate directly against a disabled person.

Indirect discrimination and discrimination arising from a disability can affect a disabled person. However, a service or employer can excuse this if it is a "proportionate means of achieving a legitimate aim"¹⁷. We explain this sentence below.

What is a legitimate aim?

The Equality Act does not say what a "legitimate aim" is, but this could be quite broad. Legitimate means valid. Something is likely to be a valid aim if it is fair and reasonable. This could include:

- the health and safety of staff or people using a service,
- the needs of the service, and
- needing to make a profit.

What does proportionate mean?

"Proportionate" means fair. There must be a balance between the service or employer's needs and your needs as a disabled person.

When a service or employer is thinking about their aims, they should make sure they are fair. They should try to reach their aim in a way that discriminates the least.¹⁸

Example*

Rosa works for an organisation where all employees must work from 9am to 5pm. Rosa takes medication for depression which makes her sleepy. This makes it difficult for Rosa to get to work on time and she is sometimes late and gets told off. Rosa asks for different working hours, from 10am to 6pm, so that she can start and leave work later. Her employer says no.

This could be indirect discrimination. Rosa's employers say that this is a proportionate means of achieving a legitimate aim. They say that they cannot change her hours as there would be no security on site after 5pm. This would mean that Rosa's health and safety would be at risk. They also say that the business needs Rosa to be at work from 9am to

5pm. These are the organisation's business hours. They say there would be no work for her to do after 5pm.

An employer or service may explain a rule or procedure as being a 'proportionate means of achieving a legitimate aim'. That doesn't mean disabled people aren't affected by it. However, the law says that these rules are fair and legal. This is sometimes called 'objective justification'.

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4. How would a service provider or employer know that I am disabled?

It is not possible to tell from looking at someone that they have a mental illness. This may affect you when you apply for a job or try to use a service. The person you are dealing with is unlikely to tell that you have a disability. This means they may not know that you might need reasonable adjustments made.

Services

You may not think to tell anyone about your mental illness when you are using services such as shops. But you may have more problems than others because of your mental illness. You can tell services about your condition. If you tell them, the Equality Act protects you from discrimination.

Employers

You may think that your employer needs to know about your mental illness. It is up to you whether to tell them. There are some jobs where you need to tell your employer. This is because of the regulations which cover these jobs.

The Equality Act stops most employers asking questions about your health before offering you a job. The employer does not have to make reasonable adjustments if they do not know you have a disability. This applies during the application process or at an interview.

At work your employer does not have to make reasonable adjustments for you unless they know about your condition.¹⁹

Our '**Work and mental illness**' factsheet has more information about telling your employer about your mental illness. You can download it for free from www.rethink.org/factsheets. Or call 0300 5000 927 and ask for a copy to be sent to you.

What if everyone at work finds out about my condition?

You may decide to tell your employer about your mental illness. They should keep this information as private as possible.

Your employer may need to tell some people at work about your mental health. They may need to so you can have reasonable adjustments. For

example, your line manager may need to know. Your employer should check with you before telling other people in your workplace.

If other staff talk about your mental health the Equality Act may protect you. It would protect you from direct discrimination, harassment or victimisation.

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5. Can an employer ask me health questions before offering me a job?

The Equality Act says that an employer can not ask you questions about your health before they offer you a job.²⁰ This is to stop discrimination because of your health.

An employer can ask you questions if they need to find out:

- if you need any reasonable adjustments for interview,
- if you will be able to do something that is part of the job,
- personal information to track who is applying for jobs with them. This helps with their equality and diversity policies²¹,
- if you could be part of an employer's scheme that favours disabled people, or
- if you have a disability that you need for the job(for example, an employer with a project for deaf people may want a deaf person to run it).

You don't have to answer health questions before you are offered a job. You could try to find out why the employer is asking these questions. This may help you decide whether or not to answer them.

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6. Can an employer ask me health questions once they have offered me a job?

Once an employer offers you a job, they can ask you health-related questions. You may be given a 'conditional' offer of a job. This means that getting the job depends on certain things. For example, an employer might say your job offer is conditional on satisfactory references. Sometimes a job offer is conditional on health or disability checks. An employer can then ask questions about your health. If at this stage your job offer is withdrawn you may be able to make a claim of disability discrimination,

You may decide not to tell an employer about your mental illness. In certain jobs your employer could take disciplinary action later on. This includes roles like teaching and being a nurse or doctor.

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7. I am a carer, am I protected by the Equality Act?

The Equality Act protects carers and relatives of people with a mental illness from direct discrimination.

An employer or service may treat you worse than others because you are caring for a disabled person. The Equality Act defines this as “discrimination by association”.

If you are a carer, the Equality Act protects you in your own right. It protects you from being treated unfairly because of any of the ‘protected characteristics’.

Example*

James is a carer for a man who has schizophrenia. James applies for a job and he tells them that he is a carer. The employer does not give James the job. Another person who is as qualified as James gets the job instead. James asks why. The employer says that his caring responsibilities would have got in the way of work. This is direct discrimination by association with a disabled person.

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8. How do I take action if I think I have been discriminated against?

Sometimes it can be difficult to prove discrimination. It is important to collect evidence and keep a record of what has happened. For example, if you feel like someone is harassing you at work, keep a diary of what people say, who said it and when.

Try to sort things out informally

You can try to sort out your problem informally first. This could involve talking to the people who have discriminated against you. You could write them a letter. Remember to keep a note of any conversations or meetings you have.

If you try to sort things out informally you might miss the time limit for taking legal action (see below). It is important to bear this in mind when you are deciding what to do and your next steps.

Grievance procedure

This may not work. But you could try raising your concerns through your employer’s disputes procedure. This is called ‘bringing a grievance’.

The Advisory Conciliation and Arbitration Service (ACAS) has produced a code of practice on disciplinary and grievance procedures. You can find this here: <http://www.acas.org.uk/media/pdf/f/m/Acas-Code-of-Practice-1-on-disciplinary-and-grievance-procedures.pdf>. This explains

how employers should handle complaints at work. An employer or employee may not follow this code. In this case you could go to an employment tribunal. This can reduce or increase an award of compensation by a quarter.

Legal action

You can take legal action to get an employment tribunal to look into your case. The tribunal is like a court. They are able to decide if someone has discriminated against you. They will sometimes award you compensation. There is a strict time limit for asking the employment tribunal to look at your case. You have three months minus one day. So if someone discriminated against you on 13th March, you will have until 12th June to take action.

ACAS has produced a guide to asking questions at work if you think someone has discriminated against you. Using this will help you get evidence together before going to an employment tribunal. You can get a copy of the guide at: www.acas.org.uk/media/pdf/m/p/Asking-and-responding-to-questions-of-discrimination-in-the-workplace.pdf.

Taking action in cases involving service providers

If you think a service provider has discriminated against you, you can take this to the county court. You have a strict time limit of six months minus one day to do this. You should bear this in mind if you try to sort out the problem informally. You may run out of time to take your problem to the county court if you do so.

Can I get legal help with taking action in my discrimination case?

If you are on a low income you might be able to get legal aid to pay for specialist legal advice. This is called representation. This is when someone who is legally trained argues your case.

If you have problems with an employer, you can only get legal aid if there are discrimination issues. Legal aid does not cover other kinds of employment problems.

The Equality Advisory and Support Service (EASS) can provide legal advice. They may also be able to tell you if you are entitled to legal aid. You can contact them on 0808 800 0082 (Monday to Friday 9am to 8pm and Saturday 10am to 2pm).

Civil Legal Advice can give you details of lawyers who will help legal aid clients. You can contact them on 0845 345 4345 (Monday to Friday 9am to 8pm and Saturday 9am to 12.30pm).

You can find out more about getting legal help in our **'How to get legal advice and assistance'** factsheet. You can download this for free at www.rethink.org/resources or call 0121 522 7007 and ask for a copy.

How much does it cost to take legal action?

Employment

The Employment Tribunal charge people to take an employment issue to them. You will have to pay two amounts of money. The first is to start your claim and the second is for the hearing.

The prices vary. It depends on how complicated your claim is. For discrimination claims fees begin at £250 for starting the claim. The charge is £950 for the hearing.²²

If you cannot afford these fees, the tribunal can say you do not have to pay. This is known as “fee remission”. You would normally need to show that you cannot afford to pay the fees. A legal adviser should be able to help you apply for fee remission.

Services

The County Court costs vary, depending on how much compensation you are asking for.

You will have to pay a small amount to make your complaint to the court. If you lose your case you may have to pay the costs of the service that you were complaining about. This could be very expensive so it is important to get legal advice before making a claim.

I think my time limit has run out, what can I do?

You will need to get specialist advice as soon as possible. If there is a good reason why you missed the time limit, you can sometimes have it extended. However, this is quite rare. You should always try to make sure that you take action within the time limits.

An employer or service may have discriminated against you over a period of time. In that case the time limit may start from the last time someone discriminated against you. Generally the time limit will start from the date of each act of discrimination. It is best to talk to a specialist as soon as you can to make sure you don't miss a time limit.

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9. The Equality Duty

The Equality Duty means that public bodies have to do certain things. A public body is an organisation that carries out a public service but is not a government department. As example is the Advisory, Conciliation and Arbitration Service (ACAS), who are included in the ‘useful contact’ section at the end of this factsheet. The Equality Duty asks public bodies to:

- stop discrimination, harassment and victimisation,
- promote equality between people with a protected characteristic and those without, and

- promote good relations between people with a protected characteristic and those without.²³

Private organisations that are doing work for public bodies also have to do this. An example would be if a private company is running a day care centre for the local council.

Courts can enforce the Equality Act 2010.

Public organisations must make sure that they treat disabled people and non-disabled people the same. To do this they must:

- remove or minimise disadvantages that disabled people face,
- take steps to meet the needs of people with disabilities, and
- encourage people with disabilities to take part in activities that they are not normally able to take part in.

The public organisation must try to tackle prejudice and increase understanding of disability.²⁴

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Please note – This information only applies to people in England. We have made every effort to make sure that this information is up-to-date and correct, but we cannot guarantee this. It was up-to-date and correct at the time of writing.

A court or tribunal could interpret the law in a different way to our examples in this factsheet.

*The ‘examples’ in the text are not legal cases or particular people. They are examples to help your understanding of the law.



Advisory, Conciliation and Arbitration Service (ACAS)

Provides free and impartial information and advice to employers and employees about workplace relations and employment law, including the Equality Act 2010.

Telephone: 0300 123 1100 (Monday to Friday 8am-8pm, Saturday 9am-1pm)

Website: www.acas.org.uk

Equality Advisory and Support Service (EASS)

An organisation that gives practical advice and information about the Equality Act 2010 and discrimination.

Telephone: 0808 800 0082 (Monday to Friday 9am to 8pm, Saturday 10am to 2pm)

Address: FREEPOST Equality Advisory Support Service FPN4431

Email: [form](#)

Website: www.equalityadvisoryservice.com



Equality and Human Rights Commission

Provides information about discrimination and the Equality Act

Website: www.equalityhumanrights.com

¹ s1, Equality Act 2010, c4.

² As note 1, s6, c1.

³ Equality Act 2010 Guidance page 8, para 1.

⁴ As note 1, s20 c10.

⁵ As note 1, s20, c7.

⁶ As note 1, s1c5.

⁷ Boyle v SCA Packaging Ltd [2009] (Although the Equality Act was not in force at this time and this case was applied to the Disability Discrimination Act 1995, this case would still appear to apply)

⁸ The Equality Act 2010 (Disability) Regulations 2010 (S.I. 2010/2128)

⁹ As note 1, s13.

¹⁰ As note 1, s19.

¹¹ As note 1, s15.

¹² As note 1, s21, c1.

¹³ As note 10.

¹⁴ Equality Act 2010 Guidance for Employees *Your Rights to Equality at Work: How You Are Managed* p 43

http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Your%20Rights%20to%20equality%20at%20work%20-%20how%20you%20are%20managed.pdf (accessed 20 November 2015).

¹⁵ As note 1, s26.

¹⁶ As note 1, s27.

¹⁷ As note 1, s13 c2.

¹⁸ EHRC Employment Statutory Code of Practice (2011), paragraph 4.28-4.32

¹⁹ As note 1, s8 c20.

²⁰ As note 1, s5 c60,

²¹ Civil Service *Best practice guidance on monitoring equality and diversity in employment* 2012, page 5 <http://www.civilservice.gov.uk/wp-content/uploads/2012/03/Equalities-Monitoring-Guidance-final.pdf> (accessed 13 November 2015).

²² Gov.uk *Make A Claim To An Employment Tribunal* 2015.

<https://www.gov.uk/employment-tribunals/make-a-claim> (accessed 8 October 2015).

²³ Part 11, Equality Act, c1 para 1.

²⁴ As note 13, para 3.

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This factsheet is available in large print.

Rethink Mental Illness Advice Service

Phone 0300 5000 927

Monday to Friday, 10am to 2pm

Email advice@rethink.org

Did this help?

We'd love to know if this information helped you.

Drop us a line at: feedback@rethink.org

or write to us at Rethink Mental Illness:

Feedback

PO Box 68795

London SE1 4PN

or call us on 0300 5000 927.

We're open 10am to 2pm, Monday to Friday.



Leading the way to a better quality of life for everyone affected by severe mental illness.

For further information on Rethink Mental Illness
Phone 0121 522 7007
Email info@rethink.org

 [facebook.com/rethinkcharity](https://www.facebook.com/rethinkcharity)

 twitter.com/rethink_

 www.rethink.org

Need more help?

Go to www.rethink.org for information on symptoms, treatments, money and benefits and your rights.

Don't have access to the web?

Call us on 0121 522 7007. We are open Monday to Friday, 9am to 5pm, and we will send you the information you need in the post.

Need to talk to an adviser?

If you need practical advice, call us on 0300 5000 927 between 10am and 2pm, Monday to Friday. Our specialist advisers can help you with queries like how to apply for benefits, get access to care or make a complaint.

Can you help us to keep going?

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