

# **Disability Law Service**

advice and legal representation for disabled people

## **The Equality Act 2010**

### **Enforcing your Rights as a Disabled Consumer**

# The Equality Act 2010

## Enforcing your Rights as a Disabled Consumer

### Introduction

The Equality Act 2010, 'the Act', came into force on 1 October 2010 replacing the Disability Discrimination Act 1995.

Under the Act service providers are not allowed to discriminate against people accessing their services because of their age, gender, race, sexual orientation, disability, gender reassignment, religion or belief.

Service providers also have a duty to make reasonable adjustments to make sure disabled people are not put at a disadvantage in accessing services.

For more information on different types of discrimination under the Act please see our factsheet: **Disabled Consumers and the Equality Act 2010**.

This factsheet is intended to give you some information on how you can enforce your rights under the Act.

## Before making a claim

Taking legal action can be very expensive and can take a lot of time. It can also be very stressful. Where possible you should try to resolve issues without taking legal action. This will be quicker and less stressful for you.

The Courts also expect you to try to resolve issues before making a claim. If you make a Court claim without first trying to resolve the issues with the service provider the Court may decide that you have acted unreasonably. In these circumstances you may have to pay some or all of the service provider's legal costs. The Court can also reduce the amount of compensation they give you.

### **Important note:**

**There are strict time limits for taking legal action under the Act. You will have six months minus one day from the date of discrimination to make your claim in the County Court. This time limit will not be extended because you are trying to resolve the issue with the service provider.**

**If your time limit is running out you may need to make a claim even if you are waiting for a response from the service provider.**

### **Writing to the service provider**

Before considering legal proceedings, you should first write to the service provider and tell them why you are unhappy. You should try to give as much information as possible and tell them why you believe you have been discriminated against. You should also tell them what you want them to do to resolve the situation.

You should tell the service provider that you want a response with a certain period of time. It is usually reasonable to ask them to respond to your letter within 21 days. If you are close to your deadline for making a claim you can give them a shorter period of time to respond. If this happens you should tell them why you need a response quicker than 21 days.

If you want the service provider to make reasonable adjustments for you it is a good idea to tell them what difficulties you have in accessing their services. You should tell them what changes you require to access their services and ask that they make these adjustments or give you their full reasons in writing if they are not able to do so. This can help you to decide if they have a good reason for not making the adjustment you require.

Please note that adjustments must be reasonable. If a service provider can show that making an adjustment would not be reasonable, for example: because of the disruption or the cost, then you may not be able to insist on the adjustment.

For large companies you may want to write to the Head Office. You can usually find the address for a company's Head Office by searching on the internet. It is usually advisable to send your letter to someone senior, for example: the Head of Customer Services or the Chief Executive.

If your complaint is against a small company or you cannot find the Head Office address then send your letter to the owner or manager of the store or branch where you are having problems.

We have included a couple of template letters at the end of this factsheet.

## Equality Questionnaire

You can also ask the service provider to complete an equality questionnaire. Questionnaires are a useful tool for challenging discrimination and for obtaining information.

The questionnaire and guidance on using it can be found using the following website:

**[www.homeoffice.gov.uk/publications/equalities/equality-act-publications/complaints-Equality-Act/](http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/complaints-Equality-Act/)**

You can use the questionnaire to explain what has happened and why you believe this is discrimination. You can also use it to ask questions for example: why haven't they made the requested adjustments? You can also ask for information, for example: policies and training records, from the service provider.

The questionnaire can help you to:

- identify any facts that they dispute;
- identify the strengths and weaknesses of your claim;
- gather evidence; **and**
- decide whether to start legal proceedings (if you have not already done so).

Once you have sent the questionnaire to the service provider, they must respond within eight weeks.

The questionnaire and any answers you receive can be used as evidence in any Court proceedings under the Act. If the service provider does not answer the questionnaire, the Court can treat this as evidence that the service provider did discriminate against you. This is known as 'drawing an inference'

of discrimination. The Court can also do this if they do not respond properly, for example: if they give you misleading answers.

### **Equalities Conciliation Service**

If the service provider does not agree to make the changes you have asked for you may still be able to resolve the matter without taking legal action.

The Equality and Human Rights Commission funds an Equalities Conciliation Service. This involves an independent person, known as the conciliator, who tries to assist you and the service provider to resolve the dispute.

This is a free service but people need to be referred either by the Equality and Human Rights Commission or by a law centre. Conciliation can only take place if both you and the service provider agree to it.

If you and the service provider agree to conciliation through the Equalities Conciliation Service your time limit for submitting a claim to the Court is extended by three months. This means that you will have nine months minus one day to submit your claim.

## **Making a claim**

If you cannot resolve the matter through writing to the service provider then you may want to consider taking legal action.

This can be a complicated process. Where possible you should get legal advice from a law centre or a solicitor. At the back of this factsheet we provide a list of organisations that you may wish to contact.

If you are considering bringing a claim in the County Court, you should seek legal advice first. This is because you are at risk of costs in the County Court.

This means if you lose your case, the Court can ask you to pay the service provider's legal costs for defending the claim.

### **Time limit for making a claim**

**The time limit for making a claim is six months minus one day** from when the discrimination took place. If the discrimination has happened more than once then you should use the date of the last act of discrimination.

If you are asking the service provider to make reasonable adjustments, the date of discrimination will be when they refuse to make the adjustment for you. If they do not respond to your request for adjustments then it is best to use the date that you wrote to them.

If you and the service provider agree to conciliation through the Equalities Conciliation Service your time limit for submitting a claim to the Court is extended by three months. This means that you will have nine months minus one day to submit your claim.

In rare circumstances, a Court can decide that it is 'just and equitable' or fair to hear the claim, even though it was sent to the Court out of time. You will have to show a very good reason, such as serious illness, for why you failed make your claim within the correct time limit.

If you have missed the deadline for making a claim, you must send your Claim Form to the Court as soon as possible. You should also send a letter explaining the reason for the delay and any evidence you have, for example: a medical certificate from your doctor.

**It is very rare for the Court to allow late claims. It is always best to make your claim before the deadline.**

## Letter before claim

Before you make a claim you need to send the service provider a letter informing them that you intend to make a claim. This is known as a 'letter before claim'.

If possible you should get legal advice before sending a letter before claim. However if this is not possible your letter should include the following information:

- What you are complaining about;
- The legal basis of your claim (please see our factsheet: '**Disabled Consumers and the Equality Act 2010**');
- Details of the actions you expect the service provider to take;
- Details of any information you want them to provide for you;
- The date they need to respond.

Sending a letter before claim also assists as it can encourage the service provider to resolve your complaint.

If you are asking for the service provider to make an adjustment then you should be as specific as possible.

You should also give a reasonable date that you would like to receive a written response. A reasonable period for a response to a letter before claim would usually be 28 days.

It is advisable to send the letter using special delivery, recorded delivery, fax or some other form of a signed delivery service so the service provider cannot deny receipt.

## Making a Claim

Claims of discrimination by service providers must be made in the County Court.

To start your claim at your local County Court, you must complete a **Claim Form N1** and return this to the Court. This is known as 'issuing the claim'.

A copy of the Claim Form N1 can be obtained either from the Courts Services website: [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk) or by visiting your local County Court administration office.

Below, we have outlined some points to remember when completing the Claim Form N1:

- The Claim Form can be typed or handwritten. Please note that the form must be completed in **black ink**. You must give the full name, title and full postal address of both yourself and the service provider.
- You will have to pay a court fee and the amount of this fee will depend on the amount of money you are claiming. You may not need to pay this fee if you are on certain benefits or have a low income. You should check with your local County Court.
- The Court fee must be paid at the time you issue the claim. You must make sure you have sufficient money to cover this cost. Further information on Court fees can be found on the Courts Services website.
- You are allowed to add the Court fee and interest to the amount you are claiming.
- The Claim Form must be signed by you or by someone authorised to sign for you, for example: a solicitor.

The Court staff will check that you have given them the right documents. However, they are not legally trained and cannot provide legal advice. If you have given them the right documents, the claim will be given a claim number

and will be sent to the service provider by the court. This is known as 'serving the claim'.

You can ask the Court to return the claim for you to serve the claim on the service provider. This must be done in writing at the time that you issue the claim. You will then have four months to serve the claim. This is known as 'self service'. If you do not serve the claim form within four months your claim will lapse. If this happens it is unlikely that the Court will allow you submit a further claim form on the same matter.

### **Particulars of Claim**

The 'particulars of claim' is where you explain the details of the claim. This should include factual information of what happened. You should try to be as specific as possible. You should also say how the service provider has discriminated against you.

You can write your particulars of claim in the box on the Claim Form. If there is not enough room, you can use a separate attached document. You should clearly mark this as 'Particulars of Claim'.

If possible you should send supporting documents with your claim. This could include a copy of the letter before claim and any other correspondence you have had with the service provider. You should also include evidence that supports your case. You can include these documents with the particulars of claim. You should make sure that you have enough copies to give to the service provider and to the Court.

The service provider has 14 days from when they receive the Claim Form to respond. However, if they acknowledge receipt of the claim then they can have an extra 14 days to respond.

## **Allocation**

If the service provider decides to defend the claim, you will be sent a copy of their Defence. You will also be sent an Allocation Questionnaire.

If the claim is defended the case will usually be moved to the service provider's local Court. If this would cause you problems because of your disability then you will need to write to the Court. You should explain why you would find travelling to the proposed Court difficult. You should also provide medical evidence. A copy of your letter and medical evidence should also be sent to the service provider or their solicitor.

You will have 14 days to complete and return the Allocation Questionnaire to the Court. Both you and the Defendant must complete an Allocation Questionnaire.

The Allocation Questionnaire provides the Court with more information about your claim. This helps the Court decide which 'track' your case is suitable for. Please see below for more information on the different tracks.

The Allocation Questionnaire also gives the option of postponing the case to allow time for mediation or to settle the dispute.

There are three types of track in County Court cases. The different tracks are used depending on the value of the case and how complex it is.

### **The Small Claims Track**

This is used for straightforward cases worth up to £5,000. Most discrimination claims will be in the small claims track.

It is an informal process, usually the parties represent themselves, and the hearing is usually held quickly and before a Judge.

The Judge may propose to decide the case on written evidence only. However, you can refuse to accept this and ask them to let you explain your case in person. If this happens the service provider will also be allowed to explain their case.

At the end of the hearing, the Judge will tell you their decision and both you and the service provider will be sent a copy of the judgement.

In Small Claims cases you are not able to claim back your legal costs, for example: any solicitor's fees you have paid. However you may be able to claim any court costs, such as your issuing fee, and fixed amounts for loss of earnings for attending the hearing.

If you lose your claim the service provider may also be able to claim for their costs such as issuing fees and loss of earnings. They will not be able to claim any legal costs, such as solicitor's fees.

### **The Fast Track**

The Fast Track is used for cases between £5,000 and £25,000.

Sometimes cases that are worth less than £5,000 can be allocated to the fast track. This happens where the Court believes they are too complex for the Small Claims Track. This may happen if you are asking the Court to force a service provider to make reasonable adjustments. It may also happen if your claim is very complex.

Cases in this track are more formal than the Small Claims Track. Cases will have a hearing which usually takes no longer than one day. The parties are usually legally represented. The cases are generally more complex and there may be witnesses to cross examine.

Only some costs are capped in Fast Track cases. It is therefore possible that you may have to pay the service provider several thousand pounds if you are

unsuccessful. If you are considering taking a claim and think that it may be allocated to the Fast Track you should seek immediate legal advice.

### **The Multi-Track**

The Multi-track is used for very complex cases and all cases over £25,000. It is very unlikely that cases of discrimination will be allocated to the Multi-track.

Costs are not capped in the Multi-track. If your case is worth over £25,000 you should seek immediate legal advice.

### **Outcomes**

At the end of the hearing, the Judge will decide the outcome of the matter and all parties to the case will receive a copy of the judgement.

Depending what you have asked for, the Judge can award the following:

- Compensation, see below;
- A declaration that you have been discriminated against;
- An injunction to make the service provider make changes such as reasonable adjustments.

### **Compensation**

Compensation for injury to feelings is the main form of compensation awarded for claims of discrimination.

Injury to feelings compensation is calculated under a scale set out in the employment case of **Vento v Chief Constable of West Yorkshire Police [2002] EWCA Civ 1871**.

The Court of Appeal set out three bandings of awards for injury to feelings.

These are:

- The Lower band of between £500 and £6,000. This is where the act of discrimination is an isolated or one off occurrence.
- The middle band of between £6,000 and £18,000. This is for serious cases, which do not merit an award in the highest band.
- The top band, of between £18,000 and £30,000. This is awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the grounds of sex or race.

In the vast majority of cases of discrimination in goods and services the amount of compensation will be in the lower band. The highest amount of compensation paid in a goods and services case was £6,500.

### **Appealing the judgement**

If you do not agree with the judge's decision, you may be able to appeal against the judgement. To appeal you must be able to show that:

- there was a serious irregularity affecting the proceedings; or
- the judge did not use the law correctly.

The time limit for appealing is 14 days from the date of service of the Court Order or Judgment. If you are unsuccessful in your appeal, you may have to pay the Defendant's costs.

# Funding

There are various ways in which you might be able to fund your claim:

## **Private Funding**

This is where you pay for the case yourself. Before starting Court action, you should consider whether you are financially able to fund the claim.

## **Conditional fee agreements**

Some solicitors may agree to take a case on a 'no win no fee' basis. This is known as a conditional fee agreement. Details of any agreements will need to be agreed with the solicitor taking the case.

**Please note that even if you have an agreement with your solicitor you may still need to pay any court fees. You may also need to pay some or all of the service provider's costs if you lose your case. For more information you should discuss this with your solicitor.**

## **Insurance**

You might be able to fund the costs of your claim via your home, car or other insurance. Many insurance policies include legal expenses insurance as part of their cover. You should check your insurance documents and contact your insurance provider for further details as soon as possible.

## **Legal Aid**

If you are eligible for Legal Aid the government may cover your costs of taking a case. It may also cover the service provider's costs if you lose your case.

There are two main tests for Legal Aid. The first is a financial test. If you are on a low income and do not have a large amount of savings then you may be

financially eligible for Legal Aid. The second test is that your case must have 'good prospects of success'. A solicitor will need to look at your case and decide what the chances of you winning your case are. If they are less than 50% then you will not be eligible for Legal Aid.

Please note: if your case is paid for by Legal Aid it will take back the cost of your case from any money or property that the service provider gives you. This is known as the 'Statutory Charge'. Your solicitor should give you more information on the Statutory Charge.

### **Equality and Human Rights Commission**

The Equality and Human Rights Commission funds some cases that it believes are very important. This may be if it thinks that the case will change or clarify the law or if it thinks that it will affect a large number of people.

If it agrees to fund your case the Equality and Human Rights Commission will cover your costs of taking a case. It may also cover the service provider's costs if you lose your case.

## **Template letters**

We have produced some templates of letters that you can send to service providers.

These letters are designed as a guide but you will need to change these to suit your case.

Here are some general points about your letter:

- Write the letter as soon as you can. This will help you to remember what happened.

- Be specific – explain what happened and why you think this was discrimination.
- If you want the service provider to do something, say what you want it to do. This could include apologising, paying you compensation and/or making a reasonable adjustment.
- Remember to include your name, address and any reference number you have.
- Read through the letter before you send it to check that it makes sense. If you can it is helpful to ask someone else to read it for you as well.
- Keep a copy of it so you can prove what you have sent.
- If you can, send it by recorded delivery. Alternatively you could send it by e-mail or fax instead or as well. If you do this you will have a record of when it was sent.
- Keep copies of any replies you receive.
- Please seek advice if you need it.

## Sample letter regarding access

[Your name]

[Your address]

[Your postcode]

[Date]

The Chief Executive / Manager [Please delete as appropriate]

[Name of service provider]

[Address of service provider] (either the place you are complaining about or the Head Office)

[Postcode]

### **By Recorded Delivery**

Dear [name / Sir / Madam,]

### **Access to your services – disability discrimination**

I am writing to complain about an incident that happened on [insert date of the incident you are complaining about].

[Explain what happened in as much detail as you can. Please see example below:]

I was unable to use **[describe the service you wanted to use or what you were unable to do]** at **[describe where it happened so that the person receiving the letter will know where you are talking about]**.

This is because **[describe what prevented you from accessing the service and explain why - for example, the only entrance to your shop is via a flight of 10 steps. I am a wheelchair user and so could not access the shop.]** As a result, it was impossible / very difficult for me to access your premises and use your services.

**[You may want to include a couple of lines explaining any inconvenience, distress or discomfort which you experienced].**

I believe that this problem could have been avoided if **[make any suggestions you have about what you think the service provider should have in place]**. Please make this adjustment or give me your full reasons in writing why you are not able to do so.

If you are not able to make the requested adjustment please tell me what steps you have taken to meet your legal duty and deal with this lack of access? Please also tell me the steps you will agree to take to put right the problems I have experienced.

Due to the seriousness of this matter please reply to me in writing within 28 days.

I look forward to hearing from you.

Yours faithfully

**[Insert your name here]**

## **Sample second letter**

[Your name]

[Your address]

[Your postcode]

[Date]

The Chief Executive [If they have one]

[Name of service provider]

[Address of service provider] (Probably best to send to the Head Office if possible)

[Postcode]

### **By Recorded Delivery**

Dear [name / Sir / Madam,]

## **Access to your services – disability discrimination**

I am writing in follow up to my letter of **[date of complaint letter]** complaining about the problems I had experienced. Please find a copy of this letter attached [it is helpful to resend them the original complaint letter so that you do not need to repeat yourself].

### **[If they responded to your letter of complaint]**

You responded to this complaint by letter dated **[date of their letter]**. However you have refused to make the adjustments I requested or give me good reasons why these adjustments cannot be made. **[If they have given you some reasons why they cannot make the adjustments but you do not think these are good enough you will need to say why. Otherwise they are likely to repeat these reasons.]**

### **[If they did not respond to your letter of complaint]**

Despite asking that you respond within 28 days, I have not received a response to this letter.

Please respond within 7 days of the date of this letter informing me either that you will be making the requested adjustment or giving me your full reasons in writing why you are not able to do so.

If you are not able to make the requested adjustment please tell me what steps you have taken to meet your legal duty and deal with this lack of access? Please also tell me the steps you will agree to take to put right the problems I have experienced.

I look forward to hearing from you.

Yours faithfully

**[Insert your name here]**

## **Further Information**

Directgov.uk

Website:

**[www.direct.gov.uk/en/MoneyTaxAndBenefits/ManagingDebt/Makingacourtclaimformoney/index](http://www.direct.gov.uk/en/MoneyTaxAndBenefits/ManagingDebt/Makingacourtclaimformoney/index)**

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## **Equality and Human Rights Commission**

The Equality and Human Rights Commission is a national organisation set up by the Government to monitor and tackle discrimination. It operates a telephone helpline for people with discrimination problems. The Equality and Human Rights Commission also publishes many useful guides and leaflets, which can be obtained via its helpline. In some cases, the Equality and Human Rights Commission will advise and represent people who have discrimination claims. It can also refer cases to the Equalities Mediation Service to settle cases via mediation.

### **Equality and Human Rights Commission England**

Equality and Human Rights Commission Helpline

Freepost RRLG-GHUX-CTR

Arndale House

Arndale Centre

Manchester M4 3EQ

Telephone: **0845 604 6610**

Textphone: **0845 604 6620**

Fax: **0845 604 6630**

Website: **[www.equalityhumanrights.com](http://www.equalityhumanrights.com)**

Opening times: Monday, Tuesday, Thursday, Friday 9am–5pm; Wednesday 9am–8pm (last call taken at 7:45pm)

## **Equalities Mediation Service**

Mediation Works  
16 Queen Street  
Wellington  
Shropshire  
TF1 1EH

Tel: **01952 224285**

Fax: **01952 224289**

Email: **ems@mediation-works.co.uk**

Website: **www.equalities-mediation.org.uk/**

This can offer an alternative means of resolving disputes without requiring recourse to the courts. A referral to this service must be made through the Equalities and Human Rights Commission, please see contact details above.

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## **Legal Services Commission**

The LSC can give contact details of solicitors and other organisations that can advise and assist you, subject to eligibility, under the free Legal Help Scheme.

29–37 Red Lion Street  
London  
WC1R 4PP  
Telephone: **0845 608 1122**  
Website: **www.clsdirect.org.uk**

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## **RADAR**

Offers legal advice on the DDA.

12 City Forum  
250 City Road  
London EC1V 8AF  
Telephone: **020 7250 3222**  
Textphone: **020 7250 0123**

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## **RNIB**

Offers legal advice to people with visual impairments.

224 Great Portland Street  
London W6 9DG  
Telephone: **020 7388 1266**

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## **The Law Centres Federation**

Provides details of local Law Centres which can give legal advice and assistance with disability discrimination claims.

Duchess House  
18–19 Warren Street  
London W1P 5DB  
Telephone: **020 7387 8570**

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**National Association of Citizen's Advice Bureaux** (also known as 'Citizens Advice')

Provides details of local CABs which can give legal advice and assistance with disability discrimination claims.

Myddleton House  
115–123 Pentonville Road  
London N1 9LZ  
Telephone: **020 7833 2181**  
Fax: **020 7833 4371**  
Website: **[www.nacab.org.uk](http://www.nacab.org.uk)**

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**The Law Society**

Provides details of solicitors who can advise on disability discrimination cases.

Ipsley Court  
Berrington Close  
Redditch  
Worcestershire B98 0TD  
Telephone: **020 7242 1222**  
Website: **[www.lawsociety.co.uk](http://www.lawsociety.co.uk)**

## **Legal Disclaimer**

Although great care has been taken in the compilation and preparation of this work to ensure accuracy, DLS cannot accept responsibility for any errors or omissions. All information provided is for education / informative purposes and is not a substitute for professional advice. Any organisations, telephone numbers and links to external web-sites have been carefully selected but are provided without any endorsement of the content of those sites.

For further advice on these matters please contact:

### **Disability Law Service**

Telephone: **020 7791 9800**

Minicom: **020 7791 9801**

Fax: **020 7791 9802**

Email: **advice@dls.org.uk**

Website: **www.dls.org.uk**

Or write to us at: 39 – 45 Cavell Street, London E1 2BP

Community  
Legal Service



advice<sup>UK</sup>  
MEMBER



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