

Identifying Disability Discrimination



A guide for advisors

About this Guide

This guide is to help advisors identify potential claims of disability discrimination and signpost clients appropriately.

This guide does not contain detailed information on the Disability Discrimination Act 1995 and therefore should not be used as a basis for advising clients.

The Disability Rights Advisors in your area will be able to provide further information and training on handling claims on disability discrimination.

The Disability Rights Workers in the Northwest

Mike Fenton is based at Rochdale Law Centre and covers Lancashire, Cumbria and North Manchester areas. Mike is a qualified solicitor with a background in representing members of trade unions. Mike is also a qualified teacher and has a wealth of experience in training.

Tel: 01706 657766

Email: mike@rochdalelawcentre.org.uk

Heather-Anne Smith is based at Trafford Law Centre. And covers the Cheshire, Merseyside and South Manchester areas. Heather-Anne is an experienced caseworker with specialist knowledge and experience in disability law having previously worked at the Disability Rights Commission. Heather-Anne is experienced in providing disability awareness training for voluntary organisations.

Tel: 0161 872 3669

Email: heather.smith@traffordlawcentre.org.uk

Contents

1.0 Meaning of Disability.....	4
• When is a person disabled?	
• What about people who have recovered from a disability?	
• What about people who know their condition is going to get worse over time?	
• What about treatment?	
• What about disfigurements?	
• Are there any conditions specifically excluded from the DDA?	
2.0 Employment (Part 2)	6
• Who is covered?	
• Discrimination in employment	
• Discrimination post employment.	
• Time limits	
3.0 Goods, Facilities and Services (Part 3).....	10
• Who is covered?	
• Discrimination in provision of Services	
• Discrimination in Housing	
• Discrimination in Transport	
• Time Limits	
4.0 Education (Part 4).....	14
• Discrimination in Schools	
• Time limits for schools claims	
• Discrimination in Post 16 education	
• Time Limits for Post 16 claims.	
5.0 Useful Contacts.....	19
6. 0 Feedback Form.....	23

1.0 The Meaning of Disability

When is a person disabled?

A person has a disability if they have a physical or mental impairment, which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

The definition of disability therefore covers a wide range of impairments including hearing and sight loss, epilepsy, speech impairments such as stammering as well as learning disabilities such as ADHD and Aspergers syndrome.

Please be aware that as disability is often but incorrectly associated with sickness and incapacity. Therefore people who would otherwise be protected by the DDA may not identify themselves as disabled.

Rajeev visits your agency for debt advice. He has received a letter from his case supplier saying he owes a large amount of money and they will take him to court unless he pays the full amount. Rajeev says he has been receiving statements but has been unable to read the small print as he has dyslexia.

Rajeev is a client who may be covered by the DDA but may not regard himself as disabled.

What about people who have recovered from a disability?

People who have had a disability within the definition are protected even if they have since recovered.

Rajinder developed clinical depression five years ago when his mother died. At the time, Rajinder had difficulty concentrating and remembering things to the extent it has a substantial and adverse affect on his day-to-day activities. Rajinder recovered 18 months later and is no longer on medication.

Rajinder could be referred to a Disability Rights Worker for advice

What about people who know their condition is going to get worse over time?

Progressive conditions are conditions that are likely to change and develop over time; examples include cancer, HIV, muscular dystrophy.

Cancer, HIV and Multiple Sclerosis are covered by the Act from the moment they are diagnosed, regardless of whether they have any effects.

Other conditions will be covered by the DDA when they have an effect on the person's day-to-day activities.

What about treatment?

Someone with an impairment may be receiving medical or other treatment, which alleviates or removes the effect of the impairment. In such cases, the treatment is ignored and the impairment is taken to have the effect it would have done without such treatment.

There are two exceptions to the rule:

- If a treatment cures an impairment: In this case it would be considered whether the person had a 'past disability'.
- If the treatment is the wearing of spectacles or contact lenses. In this case the effect while the person wearing the spectacles or contact lenses should be considered.

What about disfigurements?

People with severe disfigurements will be covered by the DDA. They do not need to show that their impairment has a substantial effect on their ability to carry out normal day-to-day activities

Are there any conditions specifically excluded from the DDA?

Yes. Certain conditions are to be regarded as not amounting to impairments for the purposes of the DDA, they are:

- Addiction or dependency on alcohol, nicotine or any other non-prescribed substance.
- Seasonal allergic rhinitis (e.g. hay fever) except where it aggravates the effect of another condition.

- Tendency to set fires
- Tendency to steal
- Tendency to physical or sexual abuse of other persons
- Exhibitionism
- Voyeurism
- Tattoos
- Non-medical body piercing.

Sometimes an excluded condition may lead, or may have been caused by an impairment, which is protected by the DDA. In such cases, the case should be referred to a specialist advisor, as it is necessary to look at which impairment the discrimination is related to.

Alison has clinical depression, which has led to her developing a dependency on narcotics.

Surinder smokes 60 cigarettes a day, which has led to her developing cancer in her mouth and throat.

Both clients could be referred to a Disability Rights Worker for advice

2.0 Employment (Part 2)

Who is covered?

Part 2 of the DDA applies to employment and to certain occupations such as partnerships, contract workers, office holders and the police.

The DDA also extends to the following occupations, which do not fall within the definition of employment:

- contract workers
- office holders
- police officers
- partners in firms
- barristers

- people undertaking practical work experience for a limited period for the purposes of vocational training.

Members of the Armed Forces are not protected by the DDA. However, civilian employees of the armed forces who are not required to engage in combat roles are covered.



Part III of the DDA covers agencies offering employment services, although the claim would be brought before the employment Tribunal.

- vocational guidance or training services, or
- services designed to assist people to find or keep jobs, or to establish themselves in an occupation in a self-employed capacity.

Employment services therefore include services provided by an employment agency or employment business. This includes employment services provided by Jobcentre Plus and other schemes that assist people to find work.

Discrimination in employment

Under Part 2 of the Act, it is unlawful for an employer to discriminate against disabled job applicants, disabled persons already in employment or disabled ex-employees.

Under Part 2 of the DDA, discrimination against a disabled person by an employer occurs in three main ways:

- when, on the grounds of a disabled person's disability, an employer treats the disabled person less favourably than it treats (or would treat) a person not having that particular disability whose relevant circumstances, including their abilities, are the same as, or not materially different from, those of the disabled person. This is referred to as "**direct discrimination**".

Frances has develops epilepsy whilst working as an administrator for Don't Care & Co. His employer dismisses him as it feels he would be 'unreliable'. Don't Care & Co does not seek any medical advice or information on Frances condition before dismissing him.

Frances could be referred to a Disability Rights Worker for advice

- when an employer fails to comply with its duty to make **reasonable adjustments**. The duty arises where a provision, criterion or practice applied by or on behalf of the employer, or any physical feature of premises occupied by the employer, place a disabled person at a substantial disadvantage compared with people who are not disabled.

Bing has ME and as a result finds it difficult to wake up early in the morning.

Her employer adopts a flexi time policy stating that all staff have to be in by 10:00, which suits Bings needs. However, in practice administrative staff, including Bing, are expected to be in the office by 8.30am to answer the phones.

Bing's manager has told her that she is letting the team down, as she is not available to answer the early morning calls. Bing has explained the effects of her disability to her manager but he has refused to allow her to come in at 10:00am.

Bing could be referred to a Disability Rights Worker for advice

- when an employer treats a **disabled person less favourably, for a reason relating to the person's disability**, than it treats (or would treat) others to whom that reason does not (or would not apply), and that treatment cannot be justified. This is referred to as "disability-related discrimination".

Damon has cancer and has had to have a lot of time off work as he is undergoing chemotherapy, which leaves him feeling extremely tired, weak and nauseous. His employer has given him a verbal warning for his high level of sickness absence.

Damon could be referred to a Disability Rights Worker for advice

In addition, Part 2 makes it unlawful in relation to the recruitment or retention of staff, for an employer to subject a disabled person to harassment for a reason that relates to his or her disability. Under the DDA, harassment is a freestanding concept separate from discrimination.

Harassment occurs where, for a reason that relates to a person's disability, another person engages in unwanted conduct, which has the purpose or effect of:

- violating the disabled person's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for him or her.

Parul has a stammer and feels she is being harassed because her manager makes constant jokes about people with speech impairments. She asks her manager to stop doing this, but the manager says that she is being "oversensitive" as she habitually makes jokes in the office, about many different sorts of people.

Parul could be referred to a Disability Rights Worker for advice

Discrimination post-employment

Even where a disabled person's employment has come to an end, it will still be unlawful for the former employer to discriminate against the disabled person by subjecting him or her to a detriment (or to subject him or her to harassment ()) if the discrimination (or

harassment) arises out of the employment which has come to an end and is closely connected to it.



Victimisation.

Victimisation is a special form of discrimination covered by the DDA. It applies whether or not a person is disabled person.

The DDA says that a person discriminates against another person if he or she treats that person less favourably cause the person has:

- Brought proceedings under the DDA or
- Given evidence or information in connection with such proceedings; or
- Done anything else under the act; or
- Alleged the person has contravened the Act.

Victimisation is not permitted in **Employment, Provision of Goods and Services** and **Education**.

Time limits

In most cases the tribunal must receive an application within three months less one day from the date when the alleged discrimination occurred (six months if the minimum statutory dispute procedures apply).

3.0 Goods, Facilities and Services (Part 3)

Who is covered?

The Disability Discrimination Act applies to providers of goods, facilities and services **to the public**, whether in the private, public or voluntary sectors. It does not matter if services are provided free or in return for payment. It does not matter whether the services in question are being provided by a sole trader, firm, company or other organisation, or whether the person involved in providing the service is self-employed, or an employee, contractor or agent.

Organisations offering most kinds of goods, services and facilities are covered. These include:

- shops and mail order companies
- market stalls
- insurance, banks and other financial services
- doctors, dentists and other health professionals
- solicitors, accountants etc
- travel agents, hotels, restaurants and pubs
- leisure centres, tennis courts etc
- football and cricket grounds
- national parks
- cinemas and theatres
- car parks
- railway and bus stations
- day centres and meals on wheels
- children's homes
- care and nursing homes
- estate agents
- employment agencies
- churches and other places of worship
- private clubs with more than 25 members

Discrimination in provision of services.

Under Part 3 of the Act, it is unlawful for a service provider to discriminate against a disabled person:

- by refusing to provide (or deliberately not providing) any service which it provides (or is prepared to provide) to members of the public;

Alan has downs syndrome and goes into his local pub for a drink with his friends. The Bar staff in the pub pretend not to see Alan who is trying to be served at the bar.

Alan could be referred to a Disability Rights Worker for advice

- in the standard of service which it provides to the disabled person of the manner in which it provides it

Louise, who is a wheelchair user, visits a restaurant with her friends for her birthday. The waiter who serves them talks very loudly when speaking with Louise and leans on the back of her wheelchair when taking their order.

Louise could be referred to a Disability Rights Worker for advice

- in the terms on which it provides a service to the disabled person.

Lisa and Jennifer want to book a holiday to celebrate their recent civil partnership. As they are both disabled, the travel agent asks for a higher deposit on their booking as it thinks disabled people are more likely to cancel the holiday.

Lisa and Jennifer could be referred to a Disability Rights Worker for advice

Under the DDA, service providers have a duty to make reasonable adjustments to:

- change a practice, policy, or procedure which makes it impossible or unreasonably difficult for disabled people to make use of its services
- provide an auxiliary aid or service if it would enable (or make it easier for) disabled people to make use of services.

Simone is deaf and uses International Sign Language. Simone goes to an advice agency for advice on becoming a British citizen but cannot understand the advisor. As she cannot read written, she does not understand the letter the advisor sends her. She asks for an ISL interpreter but this is not provided.

Simone could be referred to a Disability Rights Worker for advice

- provide a reasonable alternative method of making its services available to disabled people where a physical feature makes it impossible or unreasonably difficult for disabled people to make use of them

A high Street bank has two steps and a heavy door to its entrance, which means Vivienne, who has mobility difficulties, cannot access the bank.

Vivienne could be referred to a Disability Rights Worker for advice

Discrimination in Housing

As well as prohibiting discrimination in the provision of goods, facilities and services, Part 3 of the DDA also makes it unlawful for landlords and other persons who are disposing of, managing, or letting premises, to discriminate against a disabled person.

For the purposes of the provisions in relation to premises, a person discriminates against a disabled person if, for a reason which relates to the disabled person's disability, that person treats the disabled person less favourably than that person treats (or would treat) others to whom that reason does not (or would not) apply; and cannot show that the treatment is justified.

Sanjiter has HIV and is chair of a local support network for people with HIV and AIDS. She contacts Mr Smith about premises he is letting as the group have received a grant for larger premises.

Mr Smith refuses to let Sanjiter rent the premises as he thinks that her clients could infect other tenants as they share toilet facilities.

Sanjiter could be referred to a Disability Rights Worker for



There is no legal duty to make reasonable adjustments to premises, which are sold, let or managed.

Discrimination and Transport

Any service involving the use of any means of transport (for example, taxis, hire cars, buses, coaches, trains, aircrafts and ships) is excluded from Part III. However, services provided in transport premises, such as timetables, booking facilities, waiting rooms etc at airports, ferry terminals and bus, coach or train stations would be covered by this Part of the Act.

Time Limits

Part III claims (with the exception of employment services) are brought before the County Court. Therefore there is a time limit of 6 months less one day within which to make a claim.

4.0 Education (Part 4)

The Disability Discrimination Act applies to schools and providers of post-16 education, including further and higher education, and related services.

Discrimination and Schools



Clients with **claims against schools** should be referred to IPSEA (address at back of leaflet) or an education specialist if appropriate, as the Disability Rights Workers cannot advise on these cases.

Part 4 of the DDA covers education provided at all schools in England and Wales. This includes independent and publicly funded schools, mainstream and special schools. It includes primary and secondary schools, non-maintained special schools and pupil referral units.

Part 4 also covers all local education authority and education authority maintained nursery schools and nursery classes and nursery provision at independent schools and grant-aided schools. Non-school providers of nursery education, whether in the public, private or voluntary sectors, are also covered.

Part 4 of the Act covers every aspect of school life: admissions, exclusions, and education and associated services. This covers a broad range of activities including:

- preparation for entry to the school
- the curriculum
- teaching and learning
- classroom organisation
- timetabling
- grouping of pupils
- homework
- access to school facilities
- activities to supplement the curriculum e.g. a drama group visiting the school
- school sports
- school policies
- breaks and lunchtimes
- the serving of school meals
- interaction with peers
- assessment and exam arrangements
- school discipline and sanctions
- exclusion procedures
- school clubs and activities
- school trips
- preparation of pupils for the next phase of education

Under Part 4 of the DDA, discrimination against a disabled person occurs in two possible ways:

- When a responsible body treats a disabled pupil or prospective pupil less favourably, for a reason relating to his or her disability, than it treats (or would treat) a person to whom that reason does not, or would not, apply and that treatment cannot be justified.

Daniel who has Aspergers Syndrome is excluded from school for getting into a fight with another boy. The other boy is not excluded despite having received more warnings for bad behaviour than Daniel.

- When a responsible body, without justification, fails to take reasonable steps to ensure that disabled pupils or prospective pupils are not placed at a substantial disadvantage in comparison with a person who is not disabled. This is known as the reasonable adjustments duty

A secondary school with a number of disabled pupils fails to negotiate the special arrangements for disabled pupils who are taking public exams.

Time Limits

In England, most claims of disability discrimination must be made to the Special Educational Needs and Disability Tribunal (SENDIST); and in Wales, to the Special Educational Needs Tribunal Wales (SENTW). Independent appeals panels will hear other discrimination claims.

The **Special Educational Needs and Disability Tribunal** hears claims of unlawful discrimination in relation to:

- fixed-term exclusions from all schools
- admissions arrangements
- admissions to, and permanent exclusions from independent and non-maintained special schools, and
- education and associated services in all schools

The time limit for bringing claims is six months minus one day from when the alleged discrimination took place.

Admission appeal panels will hear claims of discrimination in relation to refusals to admit to maintained schools and City Academies. There is often a very short time limit in which to appeal but this should not be less than 10 working days from the date of notification to the parents that their application for a place at the school was unsuccessful.

Claims of unlawful discrimination in relation to permanent exclusions from maintained schools and City Academies are heard by **independent appeal panels**. There are 15 school days from the day the parents are told of the decision of the discipline committee in which to lodge an appeal to the exclusion appeal panel.

Post 16 Education

The post-16 provisions of the Act apply only to certain types of education providers. In England and Wales, these are:

- institutions in the higher education sector
- institutions in the further education sector
- local education authorities or education authorities securing further education, including adult and community education
- schools providing further education for adults
- local education authorities providing the statutory youth service



The post-16 elements of the Act **do not apply** to providers of post-16 education not listed above, even if the provision, education or qualifications they offer are the same as those offered by institutions that are covered

A private college offers a Typing course. The course is identical to those offered by a nearby further education college. However, the private college is not covered by Part 4 of the Act, but by Part 3.

Under Part 4 of the DDA, discrimination against a disabled person occurs in two main ways:

- When a post-16 institution treats a disabled person less favourably, for a reason relating to the person's disability, than it treats (or would treat) a person to whom that reason does not, or would not, apply and that treatment cannot be justified.

Ali has dyslexia and applies to do a distance learning degree in English. The university tells him that it does not accept dyslexic students on English degrees. The treatment he receives is less favourable compared to other students, and the reason for the treatment relates to his disability.

Ali could be referred to a Disability Rights Worker for advice

- When a post-16 institution, without justification, fails to take reasonable steps to ensure that disabled students or prospective students are not placed at a substantial disadvantage in comparison with a person who is not disabled. This is known as the reasonable adjustments duty.

Rebecca is a partially deaf student who lip-reads is attending a Business Studies course. One of her lecturers continues to lecture while simultaneously writing on the whiteboard. Rebecca asks him to stop speaking when he turns his back to use the whiteboard so that she can follow what he is saying.

Rebecca could be referred to a Disability Rights Worker for advice

Time Limits

Where your client believes that a responsible body has unlawfully discriminated against him or her, your client may bring civil proceedings in the county court. Court action must be brought within six months (less one day) of the incident of alleged discrimination.

5.0 Useful contacts (England and Wales)

Disability Rights Commission

Telephone 08457 622 633

Textphone 08457 622 644

Fax 08457 778 878

Email enquiry@drc-gb.org

Website www.drc-gb.org

DRC Helpline, FREEPOST MID 02164, Stratford upon Avon,
CV37 9BR

British Council of Disabled People (BCODP)

www.bcodp.org.uk

National umbrella organisation with 130 full member organisations of disabled people.

Tel: 01332 295 551 (textphone: 01332 295 581)

Children's Legal Centre

www.childrenslegalcentre.com

Provides parents and carers with comprehensive legal advice for those in conflict with schools and/or LEAs.

Telephone: 0845 456 6811

Opening hours: Monday to Friday, 9am-5pm

Email: clc@essex.ac.uk

Community Legal Service

www.clsdirect.org.uk

The Legal Services Commission runs the Community Legal Service. It operates a scheme for funding civil cases (formerly known as legal aid) and can help you to find a solicitor or advice centre in your area.

Tel: 0845 345 4345 (textphone: 0845 609 6677)

Court Service Disability Helpline

If a client needs help to bring a claim or attend a court hearing because of their disability, your first point of contact is the Customer Service Officer at the court that is dealing with their claim. If you need further information, you can contact the Court Service Disability Helpline.

Tel: 0800 358 3506, 9am to 5pm, Monday to Friday
(textphone: 0800 358 3506)

DIAL UK Disabled Information and Advice Line

www.dialuk.org.uk

DIAL UK is the national organisation for the DIAL network, giving services to disability information and advice providers. You can find your local DIAL by calling the national office.

Tel: 01302 310 123 (textphone: 01302 310 123; please use voice announcer)

Disability Law Service

The Disability Law Service offers free legal advice to people with disabilities.

Tel: 020 7791 9800 (textphone: 020 7791 9801)

Department of Trade and Industry (DTI)

www.dti.gov.uk

Site includes information on employment rights, ACAS and the Employment Tribunal Service.

Enquiry line: 0845 7959775.

Law Centres

Law Centres give free advice and assistance on employment law and other areas of law. You can find out where your nearest Law Centre is by calling the Law Centres Federation. Tel: 020 7387 8570

Independent Panel for Special Educational Advice (IPSEA)

www.ipsea.org.uk

IPSEA provides free independent advice on Special Educational Needs and DDA matters including representation at SENDIST/SENTW when needed. During school holidays times are reduced. Please ring for availability.

Telephone: 0800 018 4016 (Helpline) Opening hours: Monday to Thursday, 10am-4pm and 7-9pm; Friday 10am-1pm and 7-9pm

NACAB National Association of Citizens Advice Bureaux (NACAB) England

www.nacab.org.uk

The Citizens Advice Bureau can give advice and assistance on DDA cases. You can contact the Citizens Advice Bureau head

office for details of your nearest bureau (CAB). Tel: 020 7833 2181.

Royal Association for Disability and Rehabilitation (RADAR)

www.radar.org.uk

RADAR is a national umbrella organisation with around 500 member groups. It campaigns for equal rights for disabled people and gives information and advice on disability issues.

Tel: 020 7250 3222 (textphone: 020 7250 4119)

Royal National Institute for the Deaf

www.rnid.org.uk

19–23 Featherstone Street, London EC1Y 8SL

Tel: 0808 808 0123 (textphone: 0808 808 9000)

Royal National Institute of the Blind (RNIB)

www.rnib.org.uk

105 Judd Street, London WC1H 9NE

Helpline number: 0845 766 9999

The Stationery Office

The Stationery Office provides copies of the Disability Discrimination Act, the Guidance, the Code of Practice and the Civil Procedure Rules (CPR), which govern county court procedure.

Tel: 020 7873 0011

Copies of the CPR and most court forms are also available from

www.dca.gov.uk/civil/procrules_fin

Your Feedback

We welcome feedback. If you have any comments about this publication please let us know your answers to the following questions.

How helpful and/or interesting was this publication?

- Very
- Quite
- Not very, or
- Not at all

Was it easy to understand?

- Very easy
- Quite easy
- Not very easy, or
- Not at all easy

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Heather-Anne Smith
Disability Rights Worker
Trafford Law Centre
4th Floor, John Derby House
88-92 Talbot Road
Manchester
M16 0GS

Email: heather.smith@traffordlawcentre.co.uk

Fax: 0161 872 2208