



Practical Equality Rights in Welfare Benefits Advice

May 2018

A Quick Guide to:

- common everyday discriminatory situations within the welfare benefits system.
- how the laws can help
- options for further help and referrals.



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Everyday examples of discrimination in the welfare benefits system

Bella's ESA is stopped because she could not attend her assessment appointment as she needed someone to go with her. This is unfavourable treatment because of something arising in consequence of her disability. Their DWP policy of only allowing one change of appointment and not allowing an alternative method of assessment puts this claimant at a greater disadvantage than a non-disabled person, because she had to rely on someone to go with her. The DWP did not comply with their **duty to make a reasonable adjustment**. They knew about Bella's learning difficulties and failed to take into account the information on their records.

The Department of Work and Pensions (DWP) stops Alice's Employment and Support Allowance (ESA) because she has failed to attend a work capability assessment (WCA) medical. She has significant mental health difficulties, and a home visit request has been refused. She was treated unfavourably when she was found not to have good cause for failing to attend her WCA and her ESA was stopped. Her failure to attend the assessment is something arising in consequence of her disability. The refusal of the home visit and stopping her ESA is **discrimination because of something arising in consequence of disability**. The DWP also failed to comply with their **duty to make a reasonable adjustment**.

Amena is 58. Her husband died last year. He looked after all their money and did all the paperwork. She has been depressed since her husband died, and her health is poor - she has arthritis. She is looking for work and she now claims Universal Credit. She has no children, but her neighbour's friends and extended family help her out. Amena is required to search for work online for 30 hours a week. She cannot do this herself as she doesn't know enough about using the internet. She speaks a little English but not enough to deal with forms and paperwork. She has lived here since she was 15. She says that 30 hours a week is too much for me. She struggles with understanding as her English is limited (both reading and writing). She relies on my neighbour's children to help me with this. She doesn't have a computer of her own. She is worried that if they cannot help her to do the work searches, that she will lose her benefits. She would like to learn how, but she doesn't know where to get help or who to ask, and if she can learn how to do those things. She is scared to ask the Job Centre in case they stop her benefit. This could be **race indirect discrimination** because she is at a greater disadvantage because of the DWP policy of requiring online work searches of 30 hours each week. It also could be **age and sex indirect discrimination**.

More everyday examples

A Work and Health Programme Provider, DullGrey Ltd, only accepts online bookings for its training courses. This could be **indirect age discrimination** as people in an older age group would be placed at a particular disadvantage by this booking system.



A Work and Health Programme Provider, DullGrey Ltd, holds all its events and meetings in one location. That location is a fourth-floor office, and there is no lift for the public to use (the lift is reserved for staff.). That is likely to be disability discrimination: a **failure to make a reasonable adjustment for disabled people**. The physical feature of the steps to the fourth-floor places disabled people attempting to access their events at a substantial disadvantage. They have failed to take reasonable steps to avoid the disadvantage. They have not altered their lift policy to enable disabled members of the public to use the lift which would make the office accessible for disabled people, who have difficulty climbing four flights of stairs.

A Work and Health Programme Provider, DullGrey Ltd, tells a pregnant woman that she has been removed from a training course, because she would not want to attend the course when she is pregnant. This is likely to be unfavourable treatment, based on a stereotyped view of pregnancy and amount to **pregnancy discrimination**.

A black man attends an event organised by a Work and Health Programme Provider, DullGrey Ltd, where one of the staff members and other participants make racist remarks about Asian people who live locally. When he challenges them about this, they call him derogatory names and later the DullGrey Ltd manager tells him he can no longer attend their events. This would be **race harassment, direct race discrimination** and **victimisation**.

A Work and Health Programme Provider, DullGrey Ltd holds support sessions for men who want to improve their digital skills. These are on Friday lunchtimes each week. This is **indirect religious discrimination**, as Muslim men would be at a disadvantage compared with men from other religions, as the sessions are at the same time as Friday prayers at the mosque.

A Work and Health Programme Provider, DullGrey Ltd, tells a woman that all the advanced level computer programming courses are full, and she must go on a waiting list. Her husband asked to attend the same course the next day and was immediately given a place. This could be **direct sex discrimination**.

A staff member at a Work and Health Programme Provider, DullGrey Ltd, persistently holds loud derogatory conversations with a DWP work coach about a gay man, who is attending a week -long training support course. This is likely to be **sexual orientation direct discrimination**. As there is no protection against sexual orientation harassment by service providers providing services, or exercising public functions, his claim would be for direct discrimination. He could say that he was subjected to a detriment.

A Work and Health Programme Provider, DullGrey Ltd, tells a claimant who is transgender that they cannot use the toilet facilities at a training venue. All the other training participants are able to use the toilet facilities. This is less favourable treatment. It will be unlawful **direct discrimination because of gender reassignment** if DullGrey's conduct is because of the protected characteristic of gender reassignment.



A Work and Health Programme Provider, DullGrey Ltd, tell a disabled claimant that they cannot attend a training programme because they are epileptic. That would be direct discrimination: there is less favourable treatment because of the protected characteristic of disability. If DullGrey Ltd had told another disabled claimant that they could not attend a training programme because they had an assistance dog, that would be **discrimination because of something arising in consequence of disability**. In this example, the unfavourable treatment is because of something (the assistance dog) arising in consequence of a disability (a visual impairment).

A staff member at a Work and Health Programme Provider, DullGrey Ltd, puts up posters during a training course. Those posters 'make fun' of people from Ireland and their attitude to work. Two women attending the course wish to bring a claim of harassment. One of the women is Irish, the other is not. They can both bring **race harassment** claims, because they can both say that the staff member carried out unwanted conduct that had the purpose of creating a hostile and offensive environment, related to the protected characteristic of race.

A Work and Health Programme Provider, DullGrey Ltd, have a policy of starting all their training courses at 9am and finishing the courses at 5pm. If a participant leaves early, they are marked down as not having completed the course and need to attend on another day to gain a certificate of attendance. The neutral policy is that all courses, for all participants, start and finish at the same time, and there is a requirement to attend the full day. This puts women at a disadvantage, because more women than men have child and family caring responsibilities, which mean a 9am to 5pm course causes them disadvantage. One course participant, Miranda, was unable to attend a full day course, and she was put at a disadvantage because she did not get a certificate of attendance. This was **indirect sex discrimination**. DullGrey Ltd would not be able to justify this policy as a proportionate means of achieving a legitimate aim. They could offer courses in two sessions or change start and finish times.

A Work and Health Programme Provider, DullGrey Ltd has a policy that all their training is provided online. That is likely to cause substantial disadvantage to disabled people, some of whom would not be able to use online training. It is a **failure to make a reasonable adjustment for disabled people**. It would be a reasonable step to provide the training in an alternative format, in order to avoid that disadvantage.

A staff member at a Work and Health Programme Provider, DullGrey Ltd, puts up posters during a training course. Those posters 'make fun' of people from Ireland and their attitude to work. Two women attending the course want to bring claims of harassment. After they make a complaint about the harassment to DullGrey Ltd, they are told they cannot attend any other training courses provided by DullGrey Ltd, who is the only provider in their area. This is likely to be unlawful **victimisation**.



How the Equality Act 2010 can help

The Equality Act 2010 came into force on 1 October 2010. The Equality Act brought together over 116 separate pieces of legislation into one single Act. The Equality Act 2010 is the primary discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

There is an EHRC Code of Practice on Services Public Functions and Associations which sets out what service providers and public authorities should do to ensure they comply with the Act.

Discrimination

If you are treated differently or unfairly because of who you are, that is discrimination. The first step in deciding if the discrimination is unlawful is to find out why the discrimination is happening – what is the reason for the unfair treatment?

The Equality Act 2010 says that unfair treatment is discrimination if it is because of, or something to do with, one of the nine protected characteristics listed in the Act. The protected characteristics are the kinds of characteristics that we all have: our age, our sex or gender, our sexual orientation. These are things that are personal to us, and they can be very important to who we are.

The Equality Act 2010 says that discrimination by service providers, when providing services or exercising public functions, can be unlawful if it is based on one of these protected characteristics listed in the Act:

- age
- disability
- gender reassignment (transgender)
- pregnancy
- race
- religion or belief (but not harassment)
- sex
- sexual orientation (but not harassment)

Service providers can lawfully discriminate because of marriage / civil partnership.

There are six kinds of unlawful discrimination:

- direct discrimination
- harassment
- indirect discrimination
- failure to make a reasonable adjustment
- discrimination because of something arising in consequence of disability
- victimisation.



The DWP and the JobCentre (and their contractors) are required to comply with the Equality Act 2010.

The Equality Act 2010 sets out the duties on public authorities or other organisations who are exercising a public function (in Part 3).

The Equality Act 2010 says that a provider of services is anyone who is concerned with the provision of services to the public, or to a section of the public, whether or not for payment. The duties on service providers not to discriminate are set out in Section 29.

A service provider should not discriminate:

- in the terms on which they provide a service
- by terminating a service
- by subjecting someone who requires or uses a service to any other detriment.

A service provider should not harass someone who requires or uses a service.

A service provider should not victimise someone by refusing or not providing a service, or

- in the terms on which they provide a service
- by terminating a service
- by subjecting someone who requires or uses a service to any other detriment.

Human Rights Act 1998

The Human Rights Act 1998 sets out the fundamental rights and freedoms that everyone in the UK is entitled to. It incorporates the rights set out in the European Convention on Human Rights (ECHR) into domestic British law.

The Human Rights Act 1998 requires all public bodies (like the Department of Work and Pensions and local authorities, hospitals) and other bodies carrying out public functions to respect and protect your human rights.

The Human Rights Act enables people to enforce their Convention rights in the UK in three main ways:

- you can rely on your Convention rights in British courts and tribunals
- public bodies, including courts and tribunals, have a duty to act compatibly with Convention rights
- new laws laid before Parliament have to be compatible with Convention rights, and courts and tribunals, so far as possible, have to interpret laws and give effect to them in a way that is compatible with the Convention.

The Human Rights Act 1998 requires all public bodies (like the Department of Work and Pensions and local authorities, hospitals) and other bodies carrying out public functions to respect and protect your human rights.



Article One of Protocol Number One of the European Convention of Human Rights (A1P1) is part of the rights contained in the Human Rights Act 1998, at Schedule 1 Part II.

A1P1 is about protecting ‘the peaceful enjoyment’ of your possessions. It is not a right to claim benefit. It says:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

In the context of welfare benefits, A1P1 is used in arguments about whether your client has been deprived of a possession. In other words, has your client been unlawfully deprived of a benefit?

A1P1 could be used in a judicial review case to challenge the lawfulness of a set of social security regulations. Although A1P1 does not give an entitlement to a benefit, it can be used with Article 14 to say that where benefits are provided, they should not be provided in a way that is discriminatory. That could be an interference with the peaceful enjoyment of a possession (a benefit). A court would then consider if that interference could be justified. For example, if the conditions to entitlement for a benefit mean that more women than men were deprived of that benefit, the court would consider if that was discrimination because of gender, and if it was justified or not.

Article 14 of the European Convention on Human Rights Act says that it is unlawful if you are denied your other rights under the Convention in a way that is discriminatory.

Your other rights include things like a right to respect for family life (Article 8), or to peaceful enjoyment of your possessions (A1P1), or to a fair trial (Article 6). If you think that you are being denied those rights, and that is happening in a discriminatory way, then you can use Article 14 to say that is unlawful discrimination.

Article 14 is not a free-standing right. This means that you cannot use Article 14 to say simply that you have experienced discrimination. Article 14 gives you the right to not to be discriminated against when you want to rely on and enjoy your other human rights.

Article 14 says:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Article 14 is about differences in treatment. It includes:

- discrimination where you are treated differently



- discrimination where you are affected differently when everyone is treated in the same way
- if you are in a significantly different situation to other people, and you think that you should be treated differently because of your different circumstances or needs.

Article 14 includes some examples of the grounds it includes, including sex and race. The protection of Article 14 also covers discrimination because of 'any ground'. The Article also refers to 'other status', and this provides protection against discrimination (in the enjoyment of the other human rights set out in the Act) on the grounds of disability, sexual orientation and age.

The protected characteristics in the Equality Act 2010

Age discrimination

The Equality Act 2010 sets out when age discrimination is unlawful.

Age is a protected characteristic under the Equality Act 2010. It is defined in Section 5 of the Equality Act.

The Equality Act 2010 gives a wide definition of age. It includes older people and younger people. You can be discriminated against because of your age, or because you are in a specific age group.

Disability discrimination

The Equality Act 2010 sets out when disability discrimination is unlawful.

Disability is a protected characteristic under the Equality Act 2010. It is defined in Section 6 of the Equality Act.

The Equality Act 2010 gives a detailed definition of disability. It says that a disability means a physical or a mental condition which has a substantial and long-term adverse impact on your ability to do normal day to day activities.

There are several important points to note about this definition:

- it includes physical and mental health conditions
- the phrase 'substantial' means more than minor or trivial
- long term means a condition which has lasted 12 months or more, or is expected to last more than 12 months
- the Equality Act definition disregards the beneficial effects of medication or treatment. For example, if someone takes medication that controls their condition, then the question is: whether they would meet the Equality Act definition if they did not take that medication
- It covers recurrent and remitting conditions, as well as progressive ones so long as they have some effect.



Some health conditions are automatically deemed to meet this definition of disability. These conditions include cancer, HIV infection and multiple sclerosis.

Annex 1 of the EHRC Code of Practice contains useful information about the definition of disability in the Equality Act 2010.

The Office of Disability Issues has issued statutory guidance (pdf) on 'matters to be taken into account in determining questions relating to the definition of disability' in the Equality Act 2010. This guidance should be taken into account by a Court or Tribunal which is determining for any purpose of the Equality Act whether a person is a disabled person, where it appears to be relevant.

Gender reassignment

The Equality Act 2010 sets out when gender reassignment discrimination is unlawful.

Gender reassignment is a protected characteristic under the Equality Act 2010. It is defined in Section 7 of the Equality Act.

In 2016 a Women and Equalities Committee report recommended that the use of the terms 'gender reassignment' and 'transsexual' in the Equality Act 2010 are outdated and misleading. The EHRC agreed with this recommendation. The preferred umbrella term is trans. It is still correct to use the term gender reassignment for clarity when referring to specific provisions in the Equality Act 2010.

For more information, see trans and transgender discrimination.

Pregnancy discrimination

In the Equality Act 2010, pregnancy and maternity are included as one of the protected characteristics. Pregnancy discrimination is defined in Section 17 of the Equality Act 2010.

Pregnancy discrimination is about unfavourable treatment. In other words, it is when a woman is treated badly or put at a disadvantage because of pregnancy or maternity. There is no need to compare her treatment to the way a man is treated.

It is discrimination to treat a woman unfavourably because

- she is, or has been, pregnant
- she has given birth, and the unfavourable treatment occurs within a period of 26 weeks beginning with the day on which she gave birth (the protected period)
- she is breastfeeding, and the unfavourable treatment occurs within the period of 26 weeks beginning with the day on which she gave birth (the protected period).

The protected period in cases involving service providers and public authorities covers the whole of a woman's pregnancy as well as 26 weeks following the birth (s.17). Outside those situations, a woman may argue that she is protected by the sex discrimination provisions. If a woman is treated less favourably because she is



breastfeeding a baby who is more than 26 weeks old, that will be direct sex discrimination.

You cannot bring a claim of harassment against a service provider (when providing services or exercising public functions) on the grounds of pregnancy or maternity discrimination. In those circumstances you should consider a claim of harassment related to sex.

Race discrimination

In the Equality Act 2010, race is one of the protected characteristics.

It is defined in [Section 9](#) of the Equality Act 2010. It has a non-exhaustive definition. The Act says that race includes:

- colour
- nationality
- ethnic or national origins.

Religion or belief discrimination

In the Equality Act 2010, religion or belief is one of the protected characteristics.

It is defined in [Section 10](#) of the Equality Act 2010.

Religion includes any religion as well as a lack of religion. Belief means any religious or philosophical belief and includes a lack of belief.

Sex discrimination

In the Equality Act 2010, sex is one of the protected characteristics.

It is defined in [Section 11](#) of the Equality Act 2010. It refers to a man or a woman.

In the Equality Act, there are separate definitions for sex, sexual orientation and gender reassignment (trans). The Equality Act does not presently provide protection on the grounds of non-binary gender.

Sexual orientation discrimination

In the Equality Act 2010, sexual orientation is one of the protected characteristics.

It is defined in [Section 12](#) of the Equality Act 2010. It means a person's orientation towards people of the same sex, the opposite sex and either sex. It relates to feelings as well as actions, and manifestations such as appearance, dress, and social life.

Trans and transgender

The Equality Act 2010 sets out when trans and transgender discrimination is unlawful.



Transgender is a protected characteristic under the Equality Act 2010. It is defined in Section 7 of the Equality Act.

The Equality Act 2010 says that you must not be discriminated against because you are transgender - that is your gender identity differs from the gender assigned to you at birth. For example, a person who was born female decides to spend the rest of his life as a man.

In the Equality Act it is known as gender reassignment. All transgender people share the common characteristic of gender reassignment.

To be protected from gender reassignment discrimination, you do not need to have undergone any specific treatment or surgery to change from your birth sex to your preferred gender. This is because changing your physiological or other gender attributes is a personal process rather than a medical one. You can be at any stage in the transition process – from proposing to reassign your gender, to undergoing a process to reassign your gender, or having completed it.

The different types of discrimination in the Equality Act 2010

Direct discrimination

The Equality Act 2010 says that direct discrimination is treating someone less favourably because of a protected characteristic. This is in Section 13 of the Equality Act 2010.

The Act says that the less favourable treatment must be because of 'a protected characteristic'. If you are treated less favourably because you are with someone else who is of a different race, even if you are not, then this will amount to discrimination because of a protected characteristic. This is because you are treated worse because of 'a protected characteristic': you do not need to have that characteristic yourself. This kind of direct discrimination is called direct discrimination by association.

It is direct discrimination if someone treats you less favourably because they think you have a protected characteristic, even though you do not. This kind of direct discrimination is called discrimination on the basis of perception. For example, if someone thinks you are gay, and treats you less favourably because of that, even though you are not gay.

Discrimination because of something arising in consequence of disability

Discrimination 'because of something arising in consequence of disability' happens when a disabled person is treated unfavourably, and this treatment is because of something arising in consequence of the disabled person's disability.

This is set out in Section 15 of the Equality Act.



Discrimination 'because of something arising in consequence of disability' has a slightly misleading name, when it is abbreviated to 'discrimination arising from disability'. It is important to note that this is different to direct discrimination against a disabled person.

- Discrimination arising from disability is about discrimination that happens because (1) of something arising in consequence of (2) a disabled persons disability.
- Direct discrimination is about discrimination (1) because of a protected characteristic eg disability.

Harassment

Harassment can be unlawful. In the Equality Act 2010, there are three types of harassment. It is defined in Section 26.

Harassment by service providers (when providing services or exercising public functions) is unlawful if it is related to age (18 and over), disability, gender reassignment (trans), race and sex.

There are three kinds of unlawful harassment of people who require or use a service, by a service provider:

1. Harassment related to a protected characteristic:
 - This happens where someone engages in unwanted conduct related to a relevant protected characteristic that has the purpose or effect of violating another's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.
 - This kind of unwanted conduct can include spoken or written words or abuse, imagery, graffiti, gestures.
 - Because the harassment only needs to be related to a protected characteristic, it can be unlawful even where the person making the claim does not have that protected characteristic. Perception and association are included.
2. Sexual harassment: unwanted conduct of a sexual nature.
3. Less favourable treatment because a person submits to or rejects conduct of an unwanted sexual nature or conduct which is related to gender reassignment or sex.

This is defined in Section 26 of the Equality Act 2010.

You cannot bring a claim of harassment against a service provider (when they are providing services or exercising public functions) on the grounds of sexual orientation, or religion or belief. Direct discrimination claims should be considered where there is no protection against harassment. In those circumstances you should consider a claim for direct discrimination and argue that the 'harassment' amounted to a detriment (section 212 (5) of the Equality Act 2010).



You cannot bring a claim of harassment against a service provider (when providing services or exercising public functions) on the grounds of pregnancy or maternity discrimination. In those circumstances you should consider a claim of harassment related to sex.

Indirect Discrimination

Indirect discrimination happens when an apparently neutral policy is widely applied, and it

- puts people sharing a protected characteristic at a particular disadvantage, and
- puts an individual claimant at that disadvantage.

In simple terms: is there a blanket or one size fits all policy that causes some people to be disadvantaged?

It is defined in [Section 19](#) of the Equality Act 2010.

Indirect discrimination is about treating everyone the same, when the impact of the treatment is unfair. Direct discrimination is about treating people differently.

It is very important to be able to clearly state what is the apparently neutral policy that causes the disadvantage. The Equality Act calls this the 'provision criterion or practice'. This sounds complicated but in fact it is helpful. These words are intended to cover a wide range of policies, procedures, criteria, rules, practices etc. You don't need to show a formal written policy or requirement in order to be able to say that something is causing disadvantage.

What is a disadvantage? Disadvantage can include denial of a service, being blocked or deterred from something, being rejected or excluded.

You need to be able to compare the impact on one group of people who share a protected characteristic, with the impact on other people who don't have that characteristic.

If the claim is about indirect disability discrimination, then the test for comparison is slightly different. This is because [Section 6 of the Equality Act](#) says that you should compare the impact on people who have the same disability, with the impact on other people who do not. For example, the comparison would not be with disabled people as a whole, but people with a particular disability – for example, with an equivalent visual impairment. This complication is one of the reasons that a claim for a disabled person will often be made about a failure to make a reasonable adjustment, instead of an indirect disability discrimination claim under the Equality Act 2010.

Indirect discrimination can be justified if it is a proportionate means of achieving a legitimate aim.



Duty to make reasonable adjustments for disabled people

The Equality Act 2010 sets out the duty on service providers, when they are providing services and exercising public functions, to make reasonable adjustments for disabled people (who meet the Equality Act definition of disability).

It is defined in [Section 20](#) and [Section 21](#) of the Equality Act 2010. [Schedule 2](#) of the Act sets out more detail about the duty on service providers and those exercising public functions. There are some significant differences to the way the duty operates for service providers and public authorities, compared to employment situations.

The three parts of the duty The duty to make reasonable adjustments has three requirements:

- where a provision, criterion or practice (PCP) puts disabled people at a substantial disadvantage compared to those who are not disabled, the service provider must take reasonable steps to avoid the disadvantage
- where a physical feature puts disabled people at a substantial disadvantage, compared with people who are not disabled, the service provider must take reasonable steps
 - to avoid that disadvantage
 - or to adopt a reasonable alternative method of providing the service or exercising the function
- where not providing an auxiliary aid puts disabled people at a substantial disadvantage compared with people who are not disabled, the service provider should provide that auxiliary aid.

Disadvantage caused to disabled people

A service provider, or public authority exercising public functions, should make reasonable adjustments when something that they do means that a disabled person is placed at a substantial disadvantage compared to non-disabled people, because of that policy. A substantial disadvantage means a disadvantage that is more than minor or trivial.

If the issue is about the substantial disadvantage caused to a disabled person by an organisation exercising public functions, [\(Schedule 2 \(2\) \(5\)\)](#) says that a substantial disadvantage means:

- if the public function is about giving someone a benefit, a disabled person is placed at a substantial disadvantage in relation to getting that benefit
- if the public function involves someone being subjected to a detriment, a disabled person has an unreasonably adverse experience when subjected to



that detriment.

An anticipatory duty

The duty on service providers and those exercising public functions to make reasonable adjustments is an anticipatory positive duty owed to disabled people generally.

This means that a public authority should not wait for an individual disabled person to raise an issue about the impact of a policy or process. The public authority should anticipate any problems, by thinking about the likely impact of any procedures in advance, and they should take positive steps to try to avoid disadvantage for disabled people using their services.

It is useful to note the guidance on this in the EHRC Code of Practice: “Because this is a duty to disabled people at large, it applies regardless of whether the service provider knows that a particular person is disabled or whether it currently has disabled customers, members etc.” (sections 7.22 and 7.33 of the Code of Practice).

No cost: A service provider or public authority cannot ask a disabled person to pay the costs of reasonable adjustments required for the service provider to comply with the duty.

What is a reasonable adjustment?

The particular adjustment that would be reasonable and appropriate in any situation will depend on a number of factors. Most importantly, there is no one size fits all adjustment. An adjustment should be made that removes the disadvantage for an individual disabled person. What works well for one person, may not be of any help to someone else.

What will be reasonable will depend on:

- the type of service being provided
- the nature of the service provider and its size and resources
- the effect of the disability on the individual disabled person
- whether taking any particular steps would be effective in overcoming the substantial disadvantage that disabled people face in accessing the services in question
- the extent to which it is practicable for the service provider to take the steps
- the financial and other costs of making the adjustment
- the extent of any disruption which taking the steps would cause



- the extent of the service provider's financial and other resources
- the amount of any resources already spent on making adjustments
- the availability of financial or other assistance.

The most important consideration is to ask your client what they think would help them. What will work for one person, may be of no help to another person. It is important to be able to show that the adjustment you are seeking will avoid disadvantage for your client.

Victimisation

In the Equality Act 2010, victimisation has a different meaning to the ordinary everyday sense in which the word is often used. Victimisation in the Equality Act is about being treated badly after you have complained about discrimination or after you have helped someone else with a discrimination claim or complaint. It is intended to provide protection against reprisals for taking action about discrimination.

It is defined in Section 27 of the Equality Act 2010. There are two parts to the statutory definition:

- what action you took about discrimination: this is called the protected act
- what happened to you because you took action: this is called the detriment.

A protected act could be bringing proceedings under the Act, giving evidence in relation to proceedings under the Act, making an allegation that a person has contravened the Act or doing any other thing for the purposes of or in connection with the Act.

Detriment could include refusing to provide a service, terminating a service or providing a service on less favourable terms.

Public Sector Equality Duty

The Equality Act 2010 imposes a general duty on public authorities to have due regard to equality when they exercise their public functions. This duty is set out in Section 149. In particular they must have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In other words, a public authority should always think about equality, and how they can reduce inequality whenever they are formulating new policies, or when they apply their own policies when they make decisions.



It is not a duty that requires a public authority to take particular steps or actions. They simply need to show that they thought properly about the different aims of the public sector equality duty.

If you think that a public authority did not think about equality when they introduced a new policy, or when they applied it, your client can bring a claim of judicial review, asking the court to make an order that the policy is quashed. The court hearing this kind of claim will not order the public authority to make specific changes to the policy, but they can order the public authority to re-consider their equality duty and the policy.

If you are challenging a policy of a public authority, then you may wish to consider claims about

- breach of public sector equality duty
- indirect discrimination
- failure to make a reasonable adjustment for disabled people
- breach of public law
- breach of Human Rights Act

Defences and exceptions for discrimination

The Equality Act 2010 contains numerous defences and exceptions for unlawful discrimination, including objective justification. This handbook cannot cover all of them and an adviser should check in each case for any possible defence or exception. You should check the Equality Act and the [EHRC Code of Practice](#). If in any doubt, seek specialist advice from the [EHRC Advisers Support Helpline](#).

The main defences and exceptions to note are:

- service providers who provide services, and public authorities carrying out public functions, can lawfully discriminate because of marriage / civil partnership
- it is lawful for service providers who provide services, and public authorities carrying out public functions, to discriminate because of age in relation to people aged under 18 years
- you cannot bring a claim of harassment against a service provider, who provides services or who is exercising a public function, on the grounds of sexual orientation, religion or belief or pregnancy or maternity
- direct discrimination cannot be justified except in the case of age discrimination
- objective justification ('a proportionate means of achieving a legitimate aim') can be a defence for: direct age discrimination, all forms of indirect discrimination, and discrimination because of something arising in consequence of disability
- if a service provider or public authority did not know, and could not be expected to know, that the disabled person had a disability, there will be no



claim for discrimination because of something arising in consequence of disability.

Public law

If you are challenging a decision by a public authority, you should also consider if the actions or decision of the public authority were lawful.

There are well established public law principles developed by case law. Public law principles are about how public authorities should conduct themselves, and about whether they have misused their powers, or failed in their duties.

The basic questions to ask are:

- has the public authority made a decision that is lawful (ie in accordance the law, including EU law and the Human Rights Act)?
- has the public authority acted reasonably?
- has the public authority acted fairly?

If a public authority has not acted in accordance with public law principles, your client can bring a judicial review challenge. This does not give an individual right or remedy, but it can be a powerful tool towards getting a policy or decision changed.

The Public Law Project has published a [short guide to public law](#) (pdf).



Taking action about discrimination

What does your client want?

One of the first, and certainly one of the most important things that an adviser should think about is 'what does your client want to happen'? In short, your client wants you to help them solve their problems. Your client does not know if the best solution is offered by using welfare rights law or by using equality rights. Their priority is gaining the best outcome.

As an adviser your role is to help them by explaining their options, so they can make an informed choice about what action to take. When you explain the possible options, you should take into account what their preferred outcome is. Do they want an apology, to get their benefit back, a home visit, help with navigating UC online, better treatment, someone to hear and listen to them and treat them with respect?

Sometimes using equality rights can help secure an outcome that is not always possible through welfare benefits routes.

Equality rights and human rights are about restoring respect and dignity. Equality rights can help to solve your clients problems, they give an adviser more tools and options, and they also help to restore dignity and respect to your client.

A fundamental characteristic of an empathetic, supportive casework service which challenges unreasonableness and discrimination is that caseworkers show clients that they recognise them as being of equal dignity, worth and respect. When we use positive Equality Act 2010 rights, public law and human rights to make appropriate challenges in our everyday interactions with public officials in the DWP and Job Centre, we can achieve wider changes that will restore respect and dignity to those people whose vulnerability requires them to use the welfare of the state.

Making a Complaint to the DWP

The DWP has a [Customer Charter](#). If you are dissatisfied with the way that the DWP has treated your client, you can make a complaint. The DWP has a [guide to using the DWP's complaint procedure](#).

A complaint can be an effective way of raising an issue that is about discrimination.

What should you say in a complaint to the DWP?

In the complaint you should set out clearly:

- what went wrong: if you think that something the DWP did was unfair treatment or discrimination, say so, and explain why
- how the poor treatment or discrimination affected your client
- what your client wants to happen – how the DWP can put it right
- ask for any apology, explanation or compensation you are seeking.

What has gone wrong?



It is important to be clear about what you think has gone wrong, so that you follow the correct procedure and time limits. It is important that you think about the best way to challenge a decision from the welfare benefits perspective, and the grounds for doing so.

Challenging a decision that you can appeal: If you wish to challenge a decision, then you may need to appeal. When the DWP told your client about the decision, they should have also told them how to challenge it. Your client may be able to ask for a revision or to appeal the decision.

Challenging a decision that you cannot appeal: If your client is unhappy about a decision, but it is not a decision that they can appeal, then you may wish to make a complaint. Check the [list of non-appealable decisions](#) (pdf).

Complaining about the way your client has been treated by the DWP, or how their claim has been handled: You can make a complaint about:

- Any practices and procedures that are discriminatory or unfair
- Discourtesy or bad behaviour by staff
- Wrong advice or information
- Delays in dealing with your client's claim that are too long
- Poor administration

Compensation, special payments and the financial redress scheme of the DWP

The DWP has a special payments scheme. Payments can be made where there has been maladministration ("things have gone wrong") such as wrong advice being given to your client by DWP staff, delays, mistakes or discourtesy.

The document "[Financial Redress for Maladministration: A DWP staff guide](#)" (April 2012) sets out the DWP's internal guidance for this scheme.

The scheme sets out the different payments that can be made and also says that the DWP can offer an apology, an explanation of what happened, and to put things right (for example to change a procedure).

It is worth remembering that in a discrimination claim a County Court cannot order the DWP to apologise or explain what happened. The County Court can make an injunction order for the DWP to do something, but this will be a long process, can put your client at risk of costs. It is important to think carefully about what outcome your client wants when you are thinking about taking action about discrimination, and what is the best way of securing that outcome.

Decision maker's guides for DWP staff

The DWP publishes its [decision makers guidance for DWP staff](#) who make decisions about benefits and pensions.

The DWP also publishes the guidance it provides for decisions about UC, PIP, and contribution-based ESA and JSA. This is known as 'advice for decision making'.

Not all the documents produced in the DWP guidance fully reflect the duties of the DWP under the Equality Act 2010. It is useful to remember that there may be additional duties upon the DWP, under the Equality Act 2010, which the DWP have not included in their own guidance. Nonetheless, the Equality Act duties are still applicable.

Enforcement of the Equality Act 2010

The First-tier Tribunal and Upper Tribunal have no jurisdiction to determine claims about a breach of the Equality Act 2010.

The Equality Act 2010 sets out the enforcement route for contraventions of the Act. A County Court has jurisdiction to determine claims about whether a service provider or public authority has breached Part 3 of the Equality Act 2010.

Judicial Review

A judicial review claim uses public law to challenge the lawfulness of a law or policy, or the lawfulness of a decision by a public body.

When should you consider bringing a judicial review claim? If your client wishes to bring a claim to challenge the merits of a decision, they should use the appropriate complaints or appeal process. Judicial review is normally seen as a last resort, to be used where there is no other suitable or effective remedy.

A court that hears a judicial review claim is not being asked to say if the decision is wrong. Instead, the court is being asked to examine the way in which a decision was taken, and whether the decision was taken in accordance with the law. The court could be also asked to examine the lawfulness of a policy or, in some cases, the validity of legislation.

The grounds for bringing a judicial review claim include:

- unlawful discrimination: breach of the Public Sector Equality Duty (section 149 Equality Act 2010)
- breach of the Human Rights Act 1998
- an error of law or a decision taken without the power to do so
- improper exercise of discretion
- irrationality/ Wednesbury unreasonableness
- procedural irregularity or unfairness.

Time limits

There is a time limit of six calendar months (less one day) for Equality Act 2010 claims in the County Court against service providers and public authorities. This is set out in section 118 of the Equality Act 2010. The time limit is normally calculated from the date that the discrimination took place. The Act does allow the time limit to



run from the date of the last act complained about, where there are a series of discriminatory acts, or a course of conduct or a discriminatory “state of affairs”.

The normal time limit in the County Court is six calendar months (less one day), from the date that the discrimination took place. The tricky point in working out the time limit for a reasonable adjustment claim, is to decide when the discrimination took place. This is because the claim is about a failure to do something.

As an alternative, it is possible to argue that for an extension of the time limit, where it is ‘just and equitable’ for the Court to extend time. That argument can be risky. It is important to show clear grounds for that kind of time limit extension.

The important point is that cases can be lost easily on time limits. If a case is lost, then your client may incur costs. It is much better to seek expert advice about your client’s claim, and about the time limits that apply in that particular case, as soon as possible.

The time limit for bringing a judicial review claim is “promptly and in any event not later than 3 months after the grounds to make the claim first arose.” (CPR 54.5)

Compensation and other remedies in discrimination claims in the County Court

If your client wins an Equality Act 2010 discrimination claim in the County Court, the Court can order that the defendant should pay compensation.

The EHRC have published a guide to ‘How to work out the value of a discrimination claim’.

The court can order the defendant to pay to your client their financial losses so that they are put back into the position they would have been in, had the discrimination not occurred. The County Court can also make an award that the Defendant pays compensation to the claimant for their injury to feelings.

It is important to keep evidence of any financial losses incurred. If your client wishes to seek compensation for injury to feelings, then it is important to show the court evidence of how the discrimination has affected them.

Equal Treatment Bench Book

The Equal Treatment Bench Book is produced by the Judicial College. The most recent version was published in February 2018, with online navigation. There is also a pdf version of the Equal Treatment Bench Book.

The overall aim of the Bench Book is to help ensure that everyone is treated fairly and equally in courts and tribunals. Although it is not a statement of the law, judges are ‘encouraged to take its guidance into account wherever applicable’. It is of relevance in all courts and tribunals

It includes guidance on how a court should treat disabled people who are court users, including those with physical or mental health impairments. The Bench Book

also has chapters that cover issues that are relevant for people in vulnerable situations, and people representing themselves (litigants in person).

More help and making a referral

Legal Aid

Legal Aid is available for help with discrimination, welfare benefits and judicial review. However, the kind of help available varies depending on the kind of issue and the advice your client is seeking.

Civil Legal Aid is available to provide legal advice on discrimination issues. It is a telephone-based service. Access to the service is through a call centre 'gateway'. The service is only available to those who are eligible – in scope and financially.

Top Tip: an issue about discrimination in welfare benefits is described on the online eligibility checker as an issue 'while you were using a service' or 'someone was carrying out a public function'.

The CLA Gateway number is
Telephone: 0345 345 4 345
Minicom: 0345 609 6677
Monday to Friday, 9am to 8pm
Saturday, 9am to 12:30pm.

<https://www.gov.uk/civil-legal-advice>

The Public Law Project have produced a guide to assist welfare rights advisers and legal aid providers with a welfare benefits contract, in determining where it might be appropriate to apply for Exceptional Case Funding (ECF) and to assist advisers in making successful applications for ECF.

Legal Aid is available for judicial review claims. There are strict costs and merits tests to obtain legal aid. The Public Law Project has published a short guide to obtaining legal aid for Judicial Review claims.

Finding a specialist discrimination adviser

The use of the Equality Act and the Human Rights Act in welfare benefits advice is a developing area of law. This means that it is not always easy to find a discrimination specialist who is also experienced in welfare benefits advice.

Before you make a referral, you may wish to seek help from the EHRC Advisers Support Helpline can provide advisers with specialist advice., or the EHRC Legal Support Project which can help with funding for a solicitor to take on a social security discrimination case.

If you wish to make a referral to an experienced solicitor or barrister, to start a claim in the County Court or High Court, you should try to find one who is familiar with litigating against the DWP in discrimination, public law and human rights. There is no



one place to look for a specialist in this area. You may need to look in more than one place, ask questions and be persistent.

Here are some tips to help you to start your search (there may be a fee to pay to join some of these groups):

- join the Discrimination Law Association. Their briefings cover all areas of discrimination law, and they hold events for practitioners across England
- join [NAWRA](#) – their events often include speakers who are experienced specialists in both welfare rights and discrimination
- join rightsnet, and search the discussion forums for tips
- look at case reports of the latest welfare benefits cases which use the Equality Act, public law and the Human Rights Act: the case reports will tell you who are the barristers and solicitors who acted for the individual claimants
- look at who is involved in projects like this one (for example, many of our Editorial Board are very experienced specialists)
- ask welfare benefits adviser colleagues who they have instructed. Join, or start, a local group like [GMWRAG](#), who have a strategic casework group, and hold events with specialist speakers.

Referring a discrimination case

As a welfare benefits adviser, you may wish to take some actions for your clients using equality rights, for example by writing a complaint letter. In some discrimination cases you may decide that further action is required and you want to refer the case to a discrimination specialist.

You should always follow your own organisation's procedures and requirements for making a referral. Some points that are important to bear in mind in discrimination cases:

- you should always refer a case where it is outside your own competence
- your client's interests are paramount: you should make a referral when it is in your client's interests for you to do so
- if you are not sure about what you are able to do, or whether to refer a case, you should seek specialist advice, for example from the EHRC Adviser Support Helpline
- time limits are important in discrimination cases, and also in judicial review, where court action must be taken 'promptly'. If you have any doubts about the date when the relevant time limit starts to run, seek specialist advice as soon as possible.
- you should ensure that you give your client the appropriate information about why you are making a referral, what they can expect to happen, and what if any costs will be incurred.
- a referral should be made to an experienced specialist in that area of law. Not all discrimination specialists will be familiar with welfare benefits law (many are employment discrimination specialists).



If you are making a referral to a solicitor for help and advice with a County Court discrimination claim, the Solicitors Regulation Authority has general information about what to ask, and what to expect.

If your client wishes to represent themselves in the County Court, in a claim to challenge discrimination, these resources may help them:

- The Civil Justice Council published a Guide to bringing and defending a small claim in the County Court (pdf) in April 2013
- The Bar Council published a Guide to Representing Yourself in Court (pdf).
- AdviceNow has published a series of guides to Going to Court.

Strategic casework

Casework that makes a difference for others, by seeking a change in the law, or a change to a policy, is strategic casework. This kind of casework is particularly important in welfare benefits advice, when you are thinking about using equality rights. In some cases you may be helping to secure better treatment for an individual client, but in other cases you might be looking at how to challenge the way a public body exercises its discretionary decision making for your client and others – what guidance they are using, what their policy is.

The problems that we try and solve for our individual clients are often the same problems that other people experience. When you see persistent widespread problems, you may want to try to make a wider strategic change. Sometimes casework is the best way of achieving that change, sometimes it may be that a combination of casework and campaigning will be most effective.

The most important consideration is what does your client want? If your client wants to solve their problem and they do not have the capacity or resources for their case to be a strategic case (that helps to change the law or a policy) then you should respect that.

What makes a good strategic case? Here are some issues to think about:

- the facts of a good strategic case should be easy to understand and clearly show the impact of the law or policy, and why it needs to be changed
- your client should understand what it means for their case to be a strategic case. It may take many months or years to resolve, and by the time the case is ended, their personal circumstances may be very different, and their immediate problem will have been resolved,
- your client may or may not wish to be the focus and centre of attention of a campaign. You should explain very clearly what is involved, including if their name be kept confidential, if they will have to give evidence (not always), how long it will take, any costs risks.
- some strategic casework may be small scale and local – about a local policy, and that is important. Other strategic casework is about seeking bigger changes to the law or national policy. National organisations like CPAG, Public Law Project, Mind etc are often looking at the possibility of strategic casework to change the law or national policies. You may want to tell them

about issues or your clients situation, for example using the [CPAG Early Warning System](#).

- if you think a case you are helping with may be a good strategic case, you should consider contacting the EHRC Adviser Support Helpline They can advise if it is the kind of case that the EHRC would support as a strategic case.

Further help

The Equality and Human Rights Commission (EHRC) provides an [**EHRC Advisers Support Helpline**](#).

It is for advisers in the advice sector, solicitors, other organisations that support individuals with their problems, trade unions, and ombudsman schemes.

It is staffed by lawyers. The Advisers Support Helpline can provide telephone-based advice on discrimination and human rights issues and cases.

The Advisers Support Helpline is open in core office hours, Monday to Friday. If staff are engaged, there is an option to leave a message and they will call you back.

The telephone numbers are:

England: 0161 829 8190

Wales: 029 2044 7790

Note: the Advisers Support Helpline is not for individual members of the public. Individual members of the public should contact the [Equality Advisory and Support Service \(EASS\)](#).

The EHRC is currently running a [**Legal Support Project for social security discrimination claims**](#).

The Legal Support Project provides advice and funding to help individuals who have experienced discrimination to pursue legal claims. Applications to the EHRC must be from solicitors and specialist advice centres only. Applications must be for social security matters where there is a potential breach of part 3 of the Equality Act 2010.

Posters to download

You can download four posters:

- Is it discrimination?
- Practical problem solving using equality rights
- Using equality rights in welfare benefits advice
- Help with using equality rights in welfare benefits



We would like to thank the Equality and Human Rights Commission who funded this project through their grants programme.