

### Equality Act 2010 and the reasonable adjustments duty

**What is the reasonable adjustments duty?** Public authorities and service providers have a duty to disabled people to make reasonable adjustments to the way they do things, if that puts disabled people at a disadvantage. This duty is in the Equality Act 2010. The duty to make reasonable adjustments only applies if the person who is disadvantaged and asking for a change, meets the Equality Act definition of disability.

**Who is it for?** The legal duty on service providers and public authorities to make reasonable adjustments is owed to disabled people at large and is anticipatory. They need to think about and make reasonable adjustments in advance, and not just for an individual. (This is different to employment where the reasonable adjustment duty is to individuals and only triggered by knowledge of that individual's disability.)

**Who does it apply to?** If there is any rule, policy, practice or requirement applied by a public authority or service provider to the way it provides its services (or carries out its public functions) and a disabled person is put at a substantial disadvantage because of it, the service provider should take reasonable steps to remove that disadvantage.

**The Equality Act uses a technical term: 'provision, criterion or practice'.** This slightly odd term is used deliberately to cover rules, policies, practices or requirements - formal or informal, written or unwritten. This is sometimes abbreviated to PCP. If there is a provision, criterion or practice which means that disabled people are at a substantial disadvantage (compared with people who are not disabled) when using or trying to use services, then the service provider has a duty to take steps to remove that disadvantage. The PCP might have that effect unintentionally – there is no need for the service provider to intend it to discriminate or cause disadvantage.

It is crucially important when making a complaint or claim to identify exactly what is the PCP that causes the disadvantage. If a policy causes disadvantage, then a reasonable adjustment could simply be, in the words of the EHRC Code of Practice: 'instructing staff to waive a criterion, amending a practice to allow exceptions, or abandoning it altogether. Often, such a change involves little more than an extension of the courtesies which most service providers already show to their customers.'

If a disabled person is at a substantial disadvantage because they have not been provided with an auxiliary aid, there is a duty on service providers to take reasonable steps to provide that aid. Examples in the Code of Practice include:

- the provision of a sign language interpreter, lip-speaker or deaf-blind communicator;
- extra staff assistance to disabled people;
- an electronic or manual note-taking service;
- telephone services to supplement other information.

If a physical feature causes substantial disadvantage for a disabled person, the public authority or service provider should make a change to the feature to remove that disadvantage or offer a reasonable alternative of providing that service the service in another way. The situation can be more complicated if the premises are owned by someone else or in a listed building, but that does not always mean a change cannot be requested and made – specialist advice should be sought.

The Act makes it clear that a person who is under a duty to make adjustments is not entitled to pass the cost of compliance to the disabled person.

**What is reasonable?** This can depend on a number of factors including:

- the disadvantage caused
- what difference the adjustment would make
- if the adjustment is what is needed to make the difference or if it is more than is necessary
- what will put the disabled person in the same position as others using the service?
- the size and resources of the service provider (eg a national bank would be expected to do more than a small charity)
- the cost of the adjustment.

What might be unreasonable in one situation might be a reasonable change for someone else.

**What is the Equality Act definition of disability?** The Equality Act 2010 gives a specific legal meaning to disability and only gives protection against discrimination if the client can show that they meet that definition.

It states that someone 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. This means it will include visible disabilities such as the need to use a wheelchair. It can also include 'invisible' disabilities – like diabetes and depression - and temporary illnesses or injuries such as severe back disorders.

A client will need to be able to describe and show four things:

- That they have a physical or mental impairment
- That impairment affects their ability to carry out normal daily activities
- The effect on normal activities is substantial
- The impairment is long term – this means it has lasted for 12 months or more, or it is likely to last that long.

If a court has to decide if someone meets the Equality Act definition, they will disregard the good effects of medication or treatment, and look at how the person would cope with normal activities if they were not taking their medication. Whether or not the client is recognised as disabled in other contexts, e.g. for the purpose of social security benefits, is a different legal test. S/he is not automatically covered by the Equality Act just because s/he is receiving DLA/PIP or a similar benefit, and vice versa.

**Is the social model of disability useful here?** Yes, because it can help us to understand when a disabled person (who meets the Equality Act definition of disability) is experiencing disadvantage. It is particularly useful, because the reasonable adjustments duty is a positive one that aims to remove the barriers that prevent (or 'disable') people from participating in society or accessing opportunities.

There are lots of examples of advice agencies seeing clients who struggle and face disadvantage in the way that services are provided to them – they are disabled by the way services are provided to them.

If you are not familiar with this duty and in particular the way it applies to service providers, it is a good idea to take a look at the examples in the EHRC Code of Practice for service providers.

**What information does a client have to give about their disability?** Because the duty to make reasonable adjustments is an anticipatory one, it applies even before a public authority or service provider knows that an individual customer or service user is disabled.

But it is important to be able to say how and why the disadvantage has been caused, and to say how that is linked to someone's disability, and show how the requested change will help remove the disadvantage for that person. And if there is a dispute it will be helpful to say how and why your client meets the statutory definition.

How much information they need to give someone else about their disability can depend on the circumstances. This does not usually mean that they need to give full details about a medical condition. (Of course this is aside from any requirements for evidence to fulfil the eligibility requirements of any benefit application).

If a client decides that they want to tell someone about their disability it will usually help if they tell them:

- what is their illness or medical condition (their impairment)
- how it affects their normal activities
- how the other person's actions, or treatment, put them at a disadvantage because of their disability
- some examples of what they could do to alter their actions or treatment and how that would help.

### **Good practice for advisers**

- Do not make assumptions about the effects of an impairment. The client is the person who best knows the effect of his/her condition.
- Where the client does not identify him/herself as having a disability, but is telling you about disadvantage, explain the broad coverage of the Equality Act. And raise the possibility of him/her falling within the Equality Act definition with sensitivity.
- Ask questions sensitively, particularly if you are asking about what your client has difficulty in doing or cannot do - explain why the law requires a negative approach..
- Be aware that some clients may "play down" the effects of their disability or attempt to complete actions beyond their usual ability in order to effectively participate in the WCA process. Make it clear to them that they have the right to adjustments and that these will not prejudice their application.
- Do not simply ask what the client is unable to do at all. Ask him/her if there is anything that is painful or tiring to do or which they would need assistance with.

### Other rights:

If someone who meets the Equality Act definition of disability is experiencing worse treatment or unfairness which is linked to their disability, they may also be able to use other discrimination rights to challenge that unfairness. These rights are to prevent:

- Direct discrimination
- Indirect discrimination
- Harassment
- Discrimination arising from disability

They also have right not be treated badly or unfairly because they have complained about discrimination. This kind of unfair treatment is called victimisation.

You may also find it useful to mention the Public Sector Equality Duty, which requires public bodies to consider equality when they make decisions about their policies and how to apply them.

### Further information

You can find out more information about these rights on AdviserNet and in the EHRC Code of Practice

- Equality Act Guidance can be downloaded from the [Equality and Human Rights Commission website<sup>1</sup>](http://www.equalityhumanrights.com/equality-act/equality-act-guidance)
- The EHRC Code can be downloaded from the [Equality and Human Rights Commission website<sup>2</sup>](http://www.equalityhumanrights.com/equality-act/equality-act-codes-of-practice/)

**The EHRC code** suggests that public services could adopt the steps below in order to ensure that they are following best practice.

- planning in advance for the requirements of disabled people and reviewing the reasonable adjustments in place;
- conducting access audits on premises;
- asking disabled customers for their views on reasonable adjustments;
- consulting local and national disability groups;
- drawing disabled people's attention to relevant reasonable adjustments so they know they can use the service;;
- properly maintaining auxiliary aids and having contingency plans in place in case of the failure of the auxiliary aid;
- training employees to appreciate how to respond to requests for reasonable adjustments;
- encouraging employees to develop additional serving skills for disabled people (for example, communicating with hearing impaired people); and
- ensuring that employees are aware of the duty to make reasonable adjustments and understand how to communicate with disabled customers so that reasonable adjustments can be identified and made.

---

<sup>1</sup> [http://www.equalityhumanrights.com/uploaded\\_files/EqualityAct/odi\\_equality\\_act\\_guidance\\_may.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/odi_equality_act_guidance_may.pdf)

<sup>2</sup> <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice/>

**This is part of a pack on ESA and reasonable adjustments.**

**Get the full resource at: <http://bit.ly/1yhUWs1>**