

Disability Discrimination - The Equality Act 2010

What is the Equality Act 2010?

The Equality Act consolidates existing Acts of Parliament (including the Disability Discrimination Act) and case law regarding discrimination against certain protected groups of people. The protected characteristics are age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

What constitutes a disability under the Equality Act 2010?

“A person is disabled if he or she has a **physical or mental impairment** and the impairment has a **substantial and long-term** adverse effect on his or her ability to carry out **normal day-to-day activities**”.

“Long term” = predicted to last for at least 12 months, or has lasted for at least 12 months. “substantial” = more than minor

The above definition of disability is very wide, and can include a range of conditions, which can be mental or physical, and lifelong or temporary.

Examples of some conditions which come under the scope of the Equality Act include:

- Diabetes;
- Physical impairments such as mobility problems;
- Learning difficulties such as dyslexia, and dyspraxia;
- Learning disabilities;
- Mental health conditions such as bipolar disorder and Depression.
- Sensory impairments, such as difficulties hearing or seeing.

What does not constitute a disability?

- Addiction (e.g alcohol)
- Hayfever;
- Tendency to start fires;

- Tendency to steal;
- Tendency to physical or sexual abuse of other persons;
- Exhibitionism / Voyeurism.

Do I need certification to prove that I have a disability?

No, there is no need for certification or registration of disability, whether in the prison or in the community. You must simply be able to demonstrate that you have a physical or mental impairment and that the adverse effect is ‘substantial’ and ‘long term’.

Have I been discriminated against?

There are various types of discrimination:

Direct discrimination occurs when someone with a protected characteristic is treated less favourably than someone without the protected characteristic, and the treatment is not a proportionate means of achieving a legitimate aim.

For example: calling someone offensive names relating to their disability.

Indirect discrimination: A person or public body (e.g. a prison) discriminates against a disabled person if they apply a provision, criterion or practice which puts the disabled person at a disadvantage compared with people without the disability

For example: failing to make ‘reasonable adjustments’ for a wheelchair user who wishes to attend Education by failing to provide a lift or classes on the ground floor.

Combined discrimination

This is where someone with a combination of protected characteristics (eg disability and race and/or age) is treated less favourably than someone without either/any of them.

Prohibited acts under the Equality Act:

Harassment

Harassment of a disabled person because of their disability is prohibited under the Act.

Harassment means that a person engages in unwanted conduct towards the disabled person, and the conduct is aimed at either:

- Violating the person's dignity;
- Creating an intimidating, hostile, degrading, humiliating or offensive environment.

Victimisation

Victimisation occurs when someone is subject to a detriment because they have alleged discrimination (for example by making a DIRF complaint), given evidence or done something in relation to proceedings under the Act, (or is believed to have done or be going to do so).

Legal requirement to make 'reasonable adjustments':

If you have a recognised disability under the Act, the prison has a legal obligation to make any necessary reasonable adjustments for you under section 20 of the Equality Act.

Generally, this applies where a criteria or physical feature puts a disabled person at a substantial disadvantage in comparison to a non-disabled person. Where this is the case, there is a legal obligation upon the prison to remove this obstacle.

This also applies where, without the provision of an auxiliary aid, the disabled person would be put at a disadvantage. If this is the case, the prison is under a duty to provide the auxiliary aid. The disabled person should not be charged a fee for the auxiliary aid.

Examples of reasonable adjustments include:

- A ramp to allow for wheelchair access;

- An adapted cell
- A wheelchair or crutches;
- Modified offending behaviour courses for people with learning difficulties;
- Orthopaedic mattresses for people with back pain/spinal injuries.

How do I get my disability needs met?

Ask to see the Disability Liaison or Equalities Officer if there is one. This can be done via a written application. You could also ask to see a nurse or healthcare professional. You can ask for reasonable adjustments. If you have not had a **social care assessment** you should ask for one- see our information sheet on **Care for prisoners who are ill or disabled**.

DIRF complaints

If you are unable to resolve issues by speaking to staff you can make a DIRF (Discrimination Incident Report Form) complaint. If not satisfied with the response it can be escalated with a COMP 1A and then to the PPO.

Inhuman and degrading treatment

In extreme cases failure to meet disability need could amount to a breach of Article 3 European Convention on Human Rights which protects you from inhuman and degrading treatment.

Court action

Claims can be made under the Equality Act, Human Rights Act or in some cases by judicial review. Legal aid is available.

If you have further queries or your issues are not resolved do not hesitate to contact our specialist caseworkers by letter or phone.

PRISONERS' ADVICE SERVICE

PO BOX 46199

LONDON EC1M 4XA

Advice Line: TEL: 020 7253 3323

Mon, Wed, Fri 10am- 12.30 & 2-4.30pm