Equality Act 2010

The [Equality Act 2010](http://www.legislation.gov.uk/ukpga/2010/15/contents) brought together existing regulations that already gave protection against all kinds of discrimination, and extended them. It gives people the right not to be disadvantaged or treated badly as a result of any ‘protected characteristics’.

The Equality Act 2010 Chapter 1, Section 4 states that:

*“The following characteristics are protected characteristics —*

* *age;*
* *disability;*
* *gender reassignment;*
* *marriage and civil partnership;*
* *pregnancy and maternity;*
* *race;*
* *religion or belief;*
* *sex;*
* *sexual orientation.”*

Under the Act, disabled people should be treated equally and should get fair access to education, employment, goods, services, facilities and transport. The Act also explains how education providers and employers have to make reasonable adjustments, provide support and make things accessible.

The Equality Act 2010 is not a replacement for individual legal advice and organisations should also refer to the Equality and Human Rights Commission (EHRC) guidance available at [www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice](http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice)

What would have to be proved to make a claim for Disability Discrimination?

This is a two part test:

Part 1 – proof that the claimant has a disability as defined by the Act;

Part 2 – proof that the claimant has been treated unfairly because of that disability.

# ****Disability as defined by the Act****

To be protected under the Equality Act, the claimant meet the legal definition. Disability is defined as:

*“a physical or mental impairment which has a substantial and long-term adverse effect on your ability to carry out normal day-to-day activities”*

* ‘Normal day-to-day’ means things that people do on a regular basis, for example mobility, dressing or cleaning (physical co-ordination), and having a conversation.
* ‘Long-term’ usually means the impairment should have lasted or be expected to last at least a year.
* ‘Substantial’ means not minor or trivial.

This definition is very wide and some impairments like cancer, HIV and Multiple Sclerosis automatically meet the definition from the point of diagnosis. People registered as blind or partially sighted are also automatically regarded as disabled under the Act, but this does not include sight impairments corrected by normal spectacles/contact lenses.

# Excluded conditions

However, it is also important to be aware that there are certain identified tendencies and conditions that are specifically deemed **not to amount to impairments**.

The Equality Act 2010 (Disability) Regulations 2010 4 (1) states that:

*“For the purposes of the Act the following conditions are to be treated as not amounting to impairments:—*

*(a) a tendency to set fires,*

*(b) a tendency to steal,*

*(c) a tendency to physical or sexual abuse of other persons,*

*(d) exhibitionism, and*

*(e) voyeurism.”*

And, The Equality Act 2010 (Disability) Regulations 2010 3 and 5 also exclude the following from being treated as impairments:

* addictions to alcohol, nicotine and “any other substance” (essentially, drug addiction); and
* tattoos and piercings.

Often a child or young person may have both a protected disability and an excluded condition, but this does not necessarily mean that a claim would fail due to the excluded conditions.

In ***Governing Body of X Endowed school v Sendist and others [2009] EWHC 1842 (Admin)*** the school was found to have failed to make reasonable adjustments for the pupil’s ADHD generally, in the period leading up to an exclusion for violence, by failing to take steps to manage non-compliant behaviour and use calming and de-escalation strategies.

Part 1 of this test ...

The claimant would have to be able to prove that it is harder for them to do everyday things and has been or is likely for you to continue to find it harder for them to do those things for at least year because of a ‘physical or mental impairment’ which might include:

* physical impairments (e.g. mobility difficulties);
* sensory impairments (e.g. visual or hearing impairments);
* learning difficulties, including people with specific learning difficulties such as dyslexia;
* mental health conditions which have a long-term effect;
* genetic and progressive conditions, if the condition affects your ability to carry out normal day-to-day activities;
* conditions which are characterised by a number of cumulative effects such as pain or fatigue;
* hidden impairments such as asthma or diabetes, if these have an effect on your day-to-day activities;
* diagnosed conditions that are not necessarily affecting you right now, but could return (recurring conditions) or get worse later on (progressive conditions).

N.B. Successful measures to treat or correct impairments (for example, medication) do not exempt the impairment.

Then … Part 2 of this test ...

The claimant would also have to prove that there is a link between their unfair treatment and their disability that could have been reasonably avoided.

Types of possible discrimination related to disability that are covered by the Act.

The Equality Act only protects people who have a disability against these types of discrimination:

* Direct discrimination (including discrimination by perception and discrimination by association);
* Indirect discrimination;
* Discrimination arising from disability;
* Failure to make reasonable adjustments;
* Harassment; and
* Victimisation.

N.B. It is possible to have experienced discrimination in more than one way.

# Discrimination within education

Part 6 of The Equality Act 2010 covers all aspects of educational life to do with how an education provider treats current, prospective and past pupils/students, parents and carers, employees, and members of the community. Everything an education provider does must be fair, non-discriminatory and not put individuals or groups of people at a disadvantage. An education provider could be a school (chapter 2), Local Authority , college or university (chapter 3). In particular, any education provider must not discriminate, harass or victimise a pupil or potential pupil in relation to:

* Admissions.
* The way it provides education for pupils.
* How it provides pupils/students access to any benefit, facility or service.
* Excluding a pupil/students or subjecting them to any other detriment.

N.B. Private education, including pre-school providers and training providers also have similar duties under the Act as service providers.

# Direct Discrimination

This is when the claimant is treated worse / less favourably than someone else because they have a disability. Therefore, they have to be able to show that there is a direct link between their disability and the way they have been treated.

***Example:*** *A blind person who meets entry requirements for an IT course is refused because the education provider wrongly assumes that blind people cannot use computers.*

**Disability by perception** gives legal protection for people who are mistakenly perceived to be disabled.

***Example****: A person is not offered a place on a college course because the college suspects they have a mental health condition (even though they do not) and are therefore concerned they will not be able to complete the course.*

Non-disabled people are also protected from **discrimination by association** to a disabled person. This might be a friend, fellow students or relative. This is important to remember if you are a carer for a disabled person.

***Example****: A training provider rejects a candidate because they are concerned the candidate’s caring responsibilities (for a disabled family member) will impact on their ability to complete an Apprenticeship.*

# Indirect discrimination

This is where a person or organisation has policies, practices or arrangements that seem to treat everyone the same, in an equal and non-discriminatory way, but**,** these policies, practices or arrangements put the claimant and others with the same disability at a disadvantage compared with those who do not have that disability.

***Example:*** *a rule that ‘everyone must use the stairs’ which is unfair for people who use wheelchairs.*

For indirect discrimination, it doesn't matter whether the person or organisation knew about the claimants disability. In some cases the policy or practice may be justified if the person or organisation can show that there was a good reason for these practices and arrangements, and it was reasonable in the circumstances.

***Example:*** *a rule that you must be above a certain height to go on a particular fun fair ride. Whilst this could be discriminatory if a person had a growth defect it would still be justifiable if the reason for the rule was that it would be unsafe unless the height criteria was met and there was no possible equipment available that could be used to make it safe for a person below that height.*

# Discrimination arising from disability

This is where the claimant is treated badly not because of their disability but because of something that happens because of their disability.Unlike direct discrimination, there is no need for the claimant to compare themselves with anyone else. They just have to show that they were treated badly, and this treatment was linked to their disability.

***Example:*** *a school refuses to allow a pupil with attention deficit hyperactivity disorder (ADHD) to go on a class visit to the theatre, because that pupil has attention difficulties and may disrupt the performance.*

But the treatment will not be unlawful if:

* the person treating them like this can show there is a good reason for this treatment, and it was reasonable in the circumstances;

or

* they did not know or could not reasonably have known they had a disability.

# Failure to making reasonable adjustments

The Equality Act says that employers and service providers including education providers (i.e. schools, colleges etc.), should think about making reasonable adjustments (in other words, changes), if it would place a person with a disability at a major disadvantage compared to other people who do not have a disability.

For Education this is an anticipatory duty owed to disabled people generally, not just particular individuals. This means that they must anticipate the type of barriers that students with various impairments may face. They must also anticipate the adjustments they can make to remove these barriers.

For Employers this is not an anticipatory duty, which means that they are only required to make adjustments if they would be ‘reasonably expected to know’ an employee has a disability.

# What is reasonable?

Reasonable adjustments could include:

* making changes to the way things are organised or done (e.g. to change a policy);
* making changes to the built environment, or physical features (e.g. creating a ramp so that students can enter a classroom);
* providing aids and services to overcome a substantial disadvantage (e.g. providing information in accessible formats, induction loops, special computer software or additional staff support when using a service).

However, some things might not be reasonable and factors include:

* the effectiveness of making the adjustment and whether it is practical to do so;
* the financial resources of the education provider or employer;
* the availability of grants, loans and other assistance to disabled students, such as DSAs, Access to Work or charitable trusts;
* the extent to which aids and services will be provided to disabled students from other sources;
* health and safety requirements;
* the relevant interests of other people – for example if the adjustment results in significant disadvantage for other students;
* if allowable competence standards apply.

Competence standards, or other standards applied to determine whether a student has reached a particular level of competence or ability, only apply if they determine the level of ability required in the specific circumstances.

Competence standards may apply when;

* Applying for a course or job
* Taking an exam or completing an assignment to gain a qualification.
* Registering with a trade organisation, such as becoming a registered Nurse or Social Worker.

N.B. How and exactly when failure to make reasonable adjustments applies, therefore depends on the context. The disabled person cannot be asked to pay for the cost of reasonable adjustments. If a person or organisation does not make reasonable adjustments when it would have been reasonable to do, this will be unlawful discrimination.

# Harassment

Harassment happens if the unwanted actions of an education provider violate the claimants dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them. Unwanted actions may include;

* spoken or written words or abuse
* imagery, graffiti
* physical gestures
* facial expression
* mimicry, jokes
* pranks.

Harassment should be connected to a protected characteristic, like disability, but you do not need to be a disabled person yourself. You may be associated with a disabled person, or people may mistakenly believe you have an impairment.

***Example:*** *a teacher repeatedly shouts at a pupil for failing to carry out an instruction because, as part of their autism, the pupil has receptive language difficulties and may have either misunderstood what has been asked, or needs more time to process the instruction.*

# Victimisation

This is when the claimant is treated unfairly as a result of:

* making an allegation of, or complaint about discrimination;

or

* supporting someone or giving evidence when someone else made an allegation of, or complaint about discrimination.

Making an Claim

# In relation to Schools

The claimant must usually take their complaint to tribunal **within six months of the date when the alleged discrimination took place**. The Tribunal will only deal with claims against schools. Remedies include ordering apologies, staff training, alteration to school policies and that reasonable adjustments are made. The tribunal does not have the power to award monetary compensation, make changes to the contents of an EHCP or to dismiss a teacher .

# In relation to Local Authority and post 16 education providers

These claims are taken to and heard by the county court. The claimant must usually take your complaint to court **within six months of the date when the alleged discrimination took place**. The outcomes of a court case may include compensation for injury to feelings, an injunction to prevent further discriminatory practices by the education provider.