"DART" - THE DISABILITY ATTITUDE RE-ADJUSTMENT TOOL

A GUIDE TO COMBATING DISABILITY DISCRIMINATION

WITHOUT LEGAL REPRESENTATION

USING THE EQUALITY ACT IN ENGLAND

Doug Paulley, September 2017

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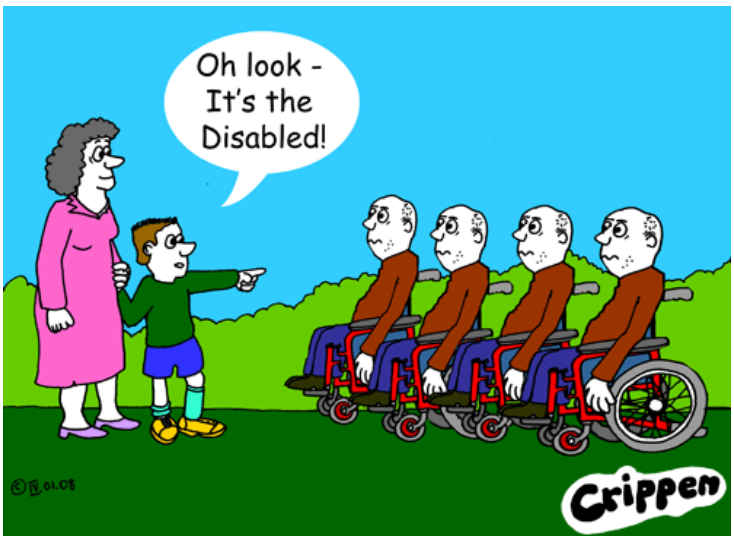

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1. FOREWORD AND DISCLAIMER

This document is a summary of the **procedures, information** and **tactics** I've learned to use through my 40+ cases of disability discrimination against service providers under the Equality Act 2010 as an English Litigant in Person. (*Procedures and terminology may differ in Scotland, Wales and Northern Ireland.*)

You should be aware that **I Am Not A Lawyer** (**IANAL**). I have **no** formal 'legal' qualifications, nor **any** experience in giving 'legal' advice. I have **no money** and **no insurance** to cover you if you lose money through following this guide.

Using any of the information in this document is **At Your Own Risk**. This document does **not** constitute Legal Advice. You are entirely responsible for any use you make of this document.

I have attempted to provide some useful tips and points to consider, but the information may be **incorrect, lacking detail** and/or **not relevant to your situation**. If considering legal action, I recommend you obtain **professional legal advice**. This document is **NOT** a substitute.

I wrote this guide solely to give disabled people an idea of how they might take legal action on disability discrimination. I have not solicited or received any **financial or other incentives**; I just hope that someone might find some of the information useful.

In other words, **do not sue ME** please. I do not have any money and it would make me stressed ☺

I have set up a **webpage** to accompany this guide, at **https://legal.kingqueen.org.uk** . It contains links to **forms**, **guidance** and **official information**, and copies of **templates** and **example documents**.

2. WHY THE EQUALITY ACT?

Disabled people in the 1980s and 1990s **fought** for **anti-discrimination legislation**. This resulted in the **Disability Discrimination Act (1995)**, which was then replaced by the **Equality Act 2010**.

It gives **disabled people** (*people who have a physical or mental impairment that has a substantial and long-term impact on their ability to do normal day-to-day activities*) **four very useful rights. Service providers** have obligations (with a few exceptions):

- Not to **discriminate** against disabled people (*not to treat them less favourably for a reason related to their disability.*)
- Not to **indirectly discriminate** against them (*where a practice, policy or rule applies to everyone but has a worse effect on disabled people than on other people*.)
- To make **reasonable adjustments** to physical features and to any "provision, criterion or practice" that makes it impossible or unreasonably difficult for disabled people to access the service.
- To provide **auxiliary aids** to enable disabled people to access their services (*e.g. a hearing loop or a ramp, information in large print etc.*)

It has been established through previous cases that "*the policy of the (Equality Act) is not a minimalist policy of simply ensuring that some access is available to the disabled: it is, so far as reasonably practicable, to approximate the access enjoyed by disabled persons to that enjoyed by the rest of the public.*"

Too often, discrimination in provision is interpreted as a **Customer Service Issue**. However, it isn't, **it's the Law**. I think it would be a good thing if more people were able to use it and enforce it.

3. WHY UNREPRESENTED?

The Equality Act has some flaws.

The major one, in my view, is that **only those who are discriminated against can enforce it**. So disabled people, who are already disadvantaged by the barriers they face in society, are the **ONLY** people who can take legal action to enforce their rights. The **Police, Council** or anybody else will not take legal action for discrimination you have experienced – **only YOU can**.

Taking a case involves **literacy, headspace, perseverance,** a **certain academic aptitude etc.** not all of which everybody has or can spare.

Nowadays, it's almost impossible to find money for legal representation (*i.e. solicitors etc.*) Thanks to the Government, the **Legal Aid system is on its knees**, and even "**No Win No Fee**" solicitors struggle to take on Equality Act cases due to poorly thought-out **changes in funding rules**.

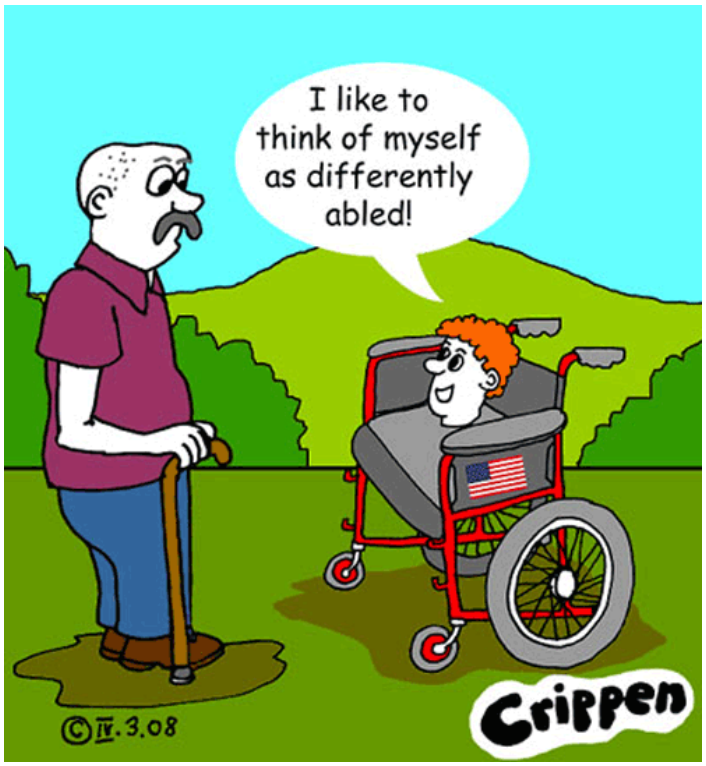
This is why service providers routinely ride roughshod over our rights: they can **get away** with it with impunity as so few people can take action.

HOWEVER, this is also an **advantage** to those fortunate few who can take cases without representation. I think that **we who can take action** owe it to those who cannot to stand up for our legal rights.

The organisation you are about to sue will probably **never** have faced Equality Act cases before, especially not in service provision. Solicitors **really hate** working with unrepresented people, otherwise known as **LIP**s (**Litigant in Person**.) LIPs can often be much more direct in what they say and do.

Even though the Equality Act is flawed, I think it is important to use and enforce it as much as possible, or it will lose the little influence it has. It's pretty much the only bit of legislation we can use. It's **very empowering** to take such cases. It **forces positive change** for disabled people.

The best bit? It's **not as difficult or scary** as you might think. Much of the action consists of run-of-the-mill form filling, whilst negotiating behind the scenes. Nearly all the time, settlement is reached **without having to go to a hearing** – the court process focuses service providers minds somewhat! Even if the case does eventually go to a hearing, the risks are usually small and it's not too difficult or stressful.



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4. RISKS

There are always Risks in any legal action. In most cases, the **risks** constitute **losing**, and being forced to pay the other side's **costs**.

However, the risks are usually minimal when taking "genuine" cases under the Act, for the following reasons.

- Nearly every case is settled by an **Out of Court agreement** between the two parties, before it gets to a Final Hearing.
- You have to **lose** in Court before you have to pay costs.
- Equality Act cases are nearly always allocated to the **"Small Claims Track"** as they are generally "low value".
- In the Small Claims Track the service provider is expected to be unrepresented (like you) (*though they never are*), so rules state only **minimal costs** can be awarded (*say: bus fares and lost earnings for the trial*). In nearly all cases, their solicitors' costs are NOT recoverable from you even if you lose.
- Judges don't automatically award costs against you if you lose. The other side must apply for it, and the Judge has to make a decision.

If you are behaving **totally unreasonably** – suing an organisation for something you have made up, for example – then you're putting yourself at risk. (*And disabled peoples' reputation, of course.*)

If you are being **genuine**, with **open-and-shut** cases, then whilst there is a theoretical risk of costs, my experience is that the risk is minimal. (*See my disclaimer in Section 1, mind you…*)

There are **other costs**. The Court Process can be **long and stressful** (*months.*) You may have to be **robust** in your dealings with the Other Side. The process is **adversarial** by design. They may be **nasty** or there may be **nasty publicity**. The potential mental health effects of this should not be underestimated.

5. COURT FEES

It costs most people money to take action through the Courts.

EXEMPTIONS

Some will be **exempt** from fees. If you are on an **Income Related benefit, or** very **low pay** (*less than £1,085 gross per month if single or £1,245 as a couple, plus £245 per child, as of 2017*) and have no savings over **£3,000** (*as of 2017*) it's **free**. (*People earning a little more may get some help towards the fee.*) You can apply online *(put the resulting reference number on your claim form etc.)* or you can fill in Form **EX160** *(see my website).* You have to do so when starting the claim and every time they ask for money.

IF YOU DO HAVE TO PAY…

Sadly, this may make it **impossible or uneconomical** to take legal action. However, if you know a disabled person who **does not** have to pay, get them to experience the same discrimination (*e.g. going to the same inaccessible shop*) and **they** can sue for free.

If you do pay Court fees and you win, the other side must **refund** the court fees you paid. If you negotiate an out-of-court settlement, you can **specify that they refund you** for the fees.

The following fees are correct as of **November 2017.** Court leaflet **EX50** gives current fees (*see website*). (*Use the column for "Court issued claim" in EX50.*) Note that the case may be settled out of court at any point (*and usually is, sometimes before starting!*) so you may well not have to pay the Hearing Fee.

- **Starting the Claim** –
  - If you ask for an injunction and/or a declaration as part of your claim (*see Chapter 11*) it's **£308**.
  - If you are claiming money only, the fee depends on how much you are prepared to limit your "damages"

(*compensation paid to you.*) (You will not receive less than £500 or more than £10,000 damages - see "Damages" section for more.)

Damages	Claim Start Fee
£500 - £1,000	**£70**
£1,000 - £1,500	**£80**
£1,500 - £3,000	**£115**
£3,000 - £5,000	**£205**
£5,000 - £10,000	**£455**

- **Hearing Fee** – between **£80** and **£335** again depending on how much you're hoping to "win" (*NB: you'll most likely have settled by then and not have to pay this*)
- **Applications**, e.g. to get their defence struck out (*an advanced tactic you probably won't use*) - **£255**

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6. FLOWCHART

At any point in the following, you or the Defendant may make an agreeable Out Of Court Offer, aborting the rest of the process. Don't worry about the jargon – I explain below.

What	Who	When	Forms
Act of Discrimination	Defendant		
Letter Before Action (LBA) and Subject Access Request (SAR)	You	As soon as possible after Discrimination	
Negotiation	You / Def.		
Start Claim (Issue in Court)	You	2+ weeks after LBA received, within 6 months of discrim.	N1, EX160
Notice of Issue	Court	When the court gets round to it	
Acknowledgement of Service	Defendant	Within 2 weeks of Notice of Issue	
Negotiation	You / Def.		
Defence served	Defendant	Within 4 weeks of Notice of Issue	
Negotiation			
Directions Questionnaire	You and Defendant	When Court gets round to it, and within timescale set by Court	N180 / N181
Negotiation			
Notice of Allocation and of Hearing	Court	When the Court gets round to it	
Hearing Fee / exemption	You	Within deadline set by Court	EX160
Negotiation			
Court Hearing	You / Def. / Court	At pre-set date and time	

7. ACT OF DISCRIMINATION

A service provider discriminates against you if:

- they make it **impossible or unreasonably difficult** for you to use an aspect of their service for a reason related to your impairment; or
- their universally-applied procedures have a **disproportionate impact** on you because of your impairment; or
- (*this is the main one*) they have failed to make "**reasonable adjustments**" to either:
  - their **premises** or
  - their **provisions, criteria or practices** (*PCP*)

  thus making it impossible or unreasonably difficult to use their service; or
- they haven't provided an **auxiliary aid** (*e.g. a hearing loop*)

They have an **Anticipatory Duty**. This means that they must consider the access problems of disabled people when designing and implementing the service, not just when you ask for it. For example, they might be required to build a ramp for a wheelchair user in advance, rather than when a wheelchair user turns up at the door; or they may have to have a menu in large print available.

You must hang your case off **one specific instance**. This can be problematic where discrimination is ongoing, e.g. a local shop that you routinely cannot access. In these circumstances, you can start legal proceedings at any point, e.g. you could issue about the last time you tried to access the shop or would have done had it been accessible.

8. LETTER BEFORE ACTION

As soon as possible after the act of discrimination, you should write a **Letter before Action** and send it to the organisation that discriminated against you (the **defendant**). You should do it **ASAP** so you can remember all the details you might forget months down the line, but also because there is a deadline of **6 months** from the date of discrimination to issue the case in Court.

You can look up the defendant's address on the Companies House website or elsewhere. I usually email the letter.

The letter should contain the following:

- Your contact details
- A title along the lines of "*Letter before Action for Disability Discrimination*"
- What your impairment is (I write "*I am a wheelchair user with a neurological condition*")
- What happened, point by point, in chronological order
- How their actions were discriminatory
- What reasonable adjustments they should have made
- How their failure to make these reasonable adjustments limited your ability to use their services
- What effect the discrimination had on you personally e.g. humiliation, inconvenience, anger (*say it how it is as this determines how much money they will eventually give you*)
- Any financial loss
- A request that they acknowledge your Letter promptly
- A statement that if they do not answer to your satisfaction within two weeks you will issue in court. My standard text:

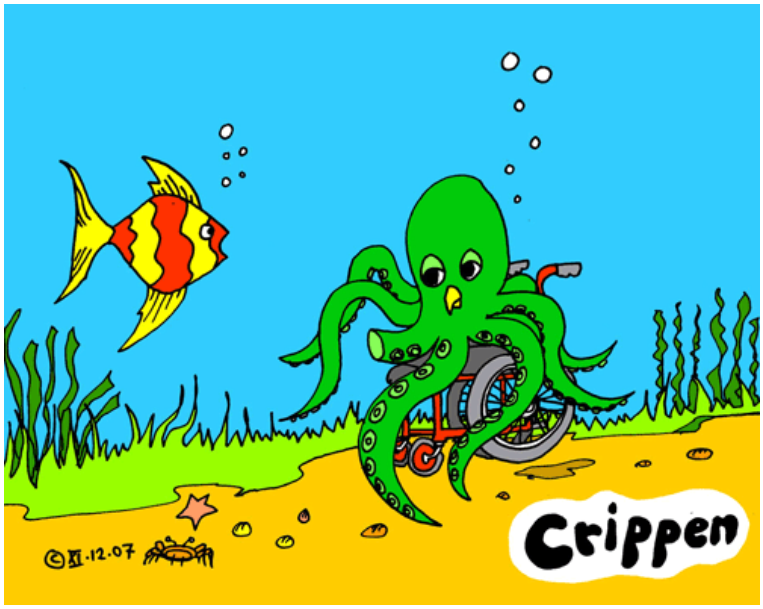
*Please indicate safe receipt of this Letter before Action. Please respond to it in full within 14 calendar days - that is, by **(date)** - otherwise I intend to issue in Court for a declaration, an injunction and damages for injuries to feelings.*

- What you want them to agree to avoid court. My standard text follows:

> *To avoid legal action, you would have to provide the equivalent I would be entitled to in Court.*
>
> *That would include an open acknowledgement that you have discriminated against me, a legal undertaking to ensure this does not happen to me again and compensation equivalent to damages for injuries to feelings commensurate with the precedents set by Vento and amended by Da'Bell.*

Don't worry about the Vento / Da'Bell bit, it isn't strictly necessary and is posturing, albeit accurate posturing ☺

I have example **Letters before Action** on my accompanying webpage; **https://legal.kingqueen.org.uk** .



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9. SUBJECT ACCESS REQUEST

You should write this **at the same time** as the Letter before Action, or **in the same letter**. (There are two examples on my webpage, **https://legal.kingqueen.org.uk** .) It is an **Evidence-Gathering** process. It can also encourage the other side to settle, as it sometimes forces bosses to take you / the situation seriously.

You have the right to see all information an organisation holds about you, subject to certain exemptions. This includes **CCTV** of you, and **emails** or **other correspondence** about you sent to / from / between their staff. You should write to, email or fax the organisation stating what information you want. You could say: "*All the information you hold on me, making sure it includes...*"

When requesting your images on CCTV, say **where** you were and **when**, and give a **description** of yourself and/or a **photo**.

For it to be valid, you don't have to say it's a **Subject Access Request**, or to send it to their Data Protection officer, but you might as well as it **may help** if you do.

Here is my standard request:

By this letter I am (also) making a Subject Access Request under the provisions in Section 7 of the Data Protection Act. Please supply me with all data you hold about me. Please ensure this includes copies of all CCTV coverage taken of me whilst I was in (the store), and all emails between, to or from your staff. Please comply with the requirement to respond to my Subject Access Request "promptly and in any case within" the long-stop of 40 calendar days.

They may write back and legitimately insist you send them a **cheque for £10** for this information. It's generally worth the cost. They may also **try to ignore** this request or claim that the info will come out in the "disclosure" process. They are incorrect: your rights to your personal data are irrespective of court action.

10. POSTURING AND NEGOTIATION

INFORMAL NEGOTIATION

The defendants will likely have solicitors representing them. They may be pleasant or unpleasant, competent or incompetent.

Both sides have to make it apparent to the other side that they **know what they are doing** and that they are **serious** about it. Depending on the defendant and their representative, there may be more (or less) bravado, persistence etc. required.

The other side's solicitor may initially not take you seriously. They may write and try to **browbeat** you into dropping the case – "*we consider your case has serious flaws and very low prospect of success*" – or they may try to **frighten you off** with estimates of their costs.

They may try to **blind you with science** (*well, law!*), or it may become apparent that they have **written you off** as "trying it on" or not knowing what you are doing (*they generally are not used to empowered Litigants in Person!*)

Sometimes they can get quite personal. This can be bruising.

You have to stick to your guns, tell them clearly that you are **deadly serious**, you will follow this **through to the end** to achieve justice, and that you know what you are doing. (*Even if you are actually a bit shaky and will happily negotiate a settlement!*)

Convincing them of this may encourage them to make an offer of **Out-of-court Settlement**, or you can make an offer. Courts like parties to do this, because it is often more satisfactory all round if both sides reach agreement.

Throughout the whole Court process, there will be communication – formal or informal – between yourself and the

other side. This can occur at any and every point. You can reach an "**out of court**" agreement up to and even during the hearing.

Such communication is usually "*without prejudice save as to costs*". This just means that **neither you nor they can refer to it in Court**. (*"Save as to costs" is not relevant to Small Claims cases.*)

Agreements can be great, but make sure you are not compromising yourself by accepting less than you want. If you want an enforceable promise that they will change something, **insist on it**.

Often organisations want such agreements to be **secret** (*via a "non-disclosure clause"*) to avoid bad publicity. This can be a useful bargaining counter, but it is good to be able to publicise it to make the wider point. You will have to decide whether you want to **hold out** for an open agreement you can publicise. In the majority of "my" cases, I have agreed to non-disclosure; but others have more negotiation guts…

FORMAL NEGOTIATION

You, the Judge or the other side may suggest **mediation** or other "Alternative Dispute Resolution". This is almost invariably **a good idea.** I have had several successful cases through mediation and conciliation.

The County Court offers a **free small claims mediation service**. This is by telephone, though if you can't use the phone or would be at a disadvantage when using it, you can insist on it being face-to-face. It takes an hour, and is usually successful.

There have previously been other useful services, but many have been a victim of the cuts, and those that remain are **not free.** See my website for links. You can try to insist that **the other side pays** for the mediation or conciliation service.

11. DAMAGES

When negotiating, you should cite what the Judge could decide you should get if you won in court. The so-called **remedies** are:

- a **declaration** *(a public statement that they discriminated;)*
- an **injunction** (*an order forcing them to do something*);
- and **damages for injury to feelings** (*cash!*)

Courts very rarely give a declaration or injunction, but the damages and any publicity often deter the other side from doing it again.

You can insist on equivalents to the remedies when negotiating a settlement. For example, you could insist they publicly state that they discriminated, and write a legally binding undertaking (*promise*) not to do so again.

It's not possible to take a disability discrimination case without being awarded damages if you win, even if you insist on only **£1**. You may decide to go for more, as hitting organisations in the pocket can be a great persuader (*and the money will be nice.*)

The scale of damages has been set in employment discrimination cases. They are called **Vento bands** (*after Vento vs Chief Constable of West Yorkshire Police*), but as Vento's case was many years ago they've since been increased by **Da'Bell** and by **Simmons**.

- The **lower band** is for **less serious** acts of discrimination. Awards are between **£660** and **£6,600**.
- The **middle band** is for cases which are more serious but do not come into the top band. These awards are from **£6,600** to **£19,800**; but you will never claim more than the maximum for the Small Claims Track, which is **£10,000**.

- The top band is for the most serious cases such as where there has been a lengthy campaign of harassment. This isn't relevant to your case as damages are above the £10,000 limit for the small claims track and therefore risk costs.

In addition, the judge in **Purves** (*Purves v. Joydisk Ltd [2003]*) set a precedent that:

> "**£750** is the **least** that may nowadays be awarded for the very slightest injury to feelings, deserving of damages, which is caused by discrimination on the ground of disability."

With inflation, that equates to about **£1,100** as of 2017.

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PUBLICITY

You may want to consider a **Publicity Strategy**. In cases I take without lawyers, I usually don't want publicity. I just want an admission that they did wrong and the problem sorted for the future, for me and other disabled people (*and any money I get is a nice extra of course*).

During the process itself, I think it's usually best **not** to publicise the case as by doing so you are escalating the situation and losing a bargaining angle. It's **illegal** (*sub-judice*) to do so between the Notice of Hearing and the Hearing. There may be a place for **publicity AFTER settlement** to achieve a wider change. A promise **not to publicise** the case can be a great bargaining point.

FORMS OF AGREEMENT

You and the other side can formalise agreements by:

- a **letter** (*before you issue in court*);
- a letter and a "**Notice of Discontinuance**" (*a simple form* (**N279**) *to stop court action without a judgment, which you fill in and post to the Court and to the defendants*);
- a **signed contract;** or
- a "**Tomlin order**" (*an open agreement stamped by a judge.*)

Which you use is unimportant; the other side will choose based on how paranoid they are and whether you agreed to non-disclosure. You should accept the other side's choice, unless it's clearly unsuitable. Get the other side to do the work, including drafting documents – they're legally trained and getting paid! – but check they haven't sneaked in anything you haven't agreed.

Check my website for example Notices of Discontinuance and Tomlin orders: **https://legal.kingqueen.org.uk** .

12. STARTING THE CLAIM

CLAIM FORM

Assuming you have not reached agreement within two weeks of your Letter before Action, you should **"Issue"** the claim in Court. You need to complete a **Claim Form**, the **Particulars of Claim**, and either a claim for **help with fees** or a **cheque**.

The Claim Form is **Form N1.** Like all Court forms, it's available online. See my website for the blank form and examples: **https://legal.kingqueen.org.uk** .

Once you know which bits you can ignore and the standard text to use, it is remarkably straightforward. I usually type as much as I can, but you will have to print it out, cross bits out and sign it.

- Top right: "**In the**" write (or type) "**County Court at**" (*town name*). You can issue in any county court, but I tend to use my nearest. As you're a disabled Litigant in Person, the judge will generally agree to your choice and make the other side travel. (*Not all courts are very accessible – worth checking any access needs on the Court's website.*)
- Leave "Fee account", "Claim number" and "Issue date" **blank**.
- **You are the claimant** so put your name, "*An Individual*" and address where it says "**Claimant's name and address...**"
- The body you're suing is the **defendant**. Put the defendant's name, what type of body it is (e.g. "*A Company*"), and its address where it says "**Defendant's name and address**..."
- For "**Brief Details of Claim**" write this:

I was discriminated against by this service provider for a reason related to my disability and I am seeking a declaration, an injunction and damages for injury to feelings.

A "**Declaration**" is a formal statement by a Judge that the Defendant discriminated against you. An "**Injunction**" is a legally binding order that they must not behave like that again. **Damages** are your compensation in **£**. (*If you are not seeking a Declaration or an Injunction, just say "… and I am seeking damages for injury to feelings"*)

- For "**Value**" write "*I expect to recover not more than*" then enter the maximum you are claiming. If you are exempt from Court fees write **£10,000** (*the limit for the Small Claims Track.*) If you have to pay fees, write the maximum amount you can claim given the Claim Start fee you can afford (*e.g.* **£1,000** *if you can only afford to pay* **£80**.) (*See Chapter 5.*)
- Write in your **preferred Court Hearing Centre**. It is usually the same one you have written in the top right.
- Write the **Defendant's name and address** again in the box.
- Leave "**Amount Claimed**" blank, as you have not set a specific amount. (*The Judge will decide the amount, unless you agree an amount in an out-of-court settlement.*)
- If you have to pay a fee, put this in the relevant box; otherwise leave it blank. You don't have **legal rep** costs so leave that and the **Total** both blank.
- On the reverse, ignore the **Claim Number** and **do not** tick the Human Rights Act box.
- Cross out "To Follow" so it reads, "**Particulars of Claim attached**". Leave the box empty. (*There is never enough room to write the Particulars in the box; it is always best to write them separately.*)
- Cross out "**The Claimant Believes**" and "**I'm duly authorised…**", enter your name and sign the declaration as "**Claimant**". (Cross out "**litigation friend**" and so on.)
- Ignore the last box.

That's the claim form done!

13. PARTICULARS OF CLAIM

Ideally type these, but handwritten is OK. These are not complicated; don't be over-awed. Use A4 paper. There are some examples on my webpage, **https://legal.kingqueen.org.uk** .

- At the top of every page, write: "***In the County Court at*** *(X), (Your Name)* ***vs****. (Defendant's Name)* ***- Particulars of Claim***"
- At the bottom of each page put "***Page X of Y***" (*you don't want them to lose any pages!*)
- The Particulars must be in **numbered paragraphs**.
- The Particulars just **restate** your Letter before Action (**LBA**). You can pretty much copy and paste much of it from that.
- I always **start** the Particulars as below. You should adjust yours to meet your situation. Make sure you include your impairment, the defendant's status and their duty not to discriminate.

1. *I am a disabled person; a full time wheelchair user with care needs as a result of (X). I am disabled as defined within the Equality Act 2010 (the Act) S6.*
2. *The defendant is a service provider within the meaning of S29 of the Act.*
3. *The defendant is under a duty not to discriminate against disabled people under S15 of the Act.*
4. *The defendant is under a duty to make reasonable adjustments to its physical features and to its Provisions, Criteria and Practices under S21 of the Act; including the duty to change any provision, criterion or practice that makes it impossible or unreasonably difficult for disabled people to use their services, and the duty to take whatever steps necessary to provide auxiliary aids required for the use of disabled people.*

Then add:

- Step-by-step details of **what happened to you**, and **why it is discriminatory** (*copy from your Letter Before Action (LBA)*)
- Where the claim relates to a failure to make a **reasonable adjustment:**
    - the duty which the service provider is in breach of (*i.e. the duty to make changes to **physical features** or to a **provision, criterion or practice***);
    - **how** they are in breach (*e.g. there are stairs only, and no ramp*); and
    - **how** that breach makes it **impossible or unreasonably difficult** for you to use the service. (*copied from the LBA*)
- Details of any **complaints** made by you and their dates (*including your LBA*), how the service provider **responded** (*or if they didn't, say so*) and why you're **still not satisfied**
- Details of how the service provider's behaviour affected you (*again*, **say it how it is,** *as this will affect any compensation: include any anger, distress, loss of confidence etc.*)
- At the end of the particulars of claim you must include the following "**Statement of Truth**":

  'I believe that the facts stated in these particulars of claim are true'

  Sign and date the Particulars immediately below the Statement of Truth.

14. SEND TO THE COURT

If you are exempt, either apply for Help with Fees online and put the resulting reference number on the claim form, or go through Form **EX160** meticulously, fill it all in and **sign and date** it. (See my website for links to forms, **https://legal.kingqueen.org.uk** .)

If you are not exempt, write a cheque payable to "HM Courts & Tribunals Service" for the relevant issuing fee (see **EX50**).

Assemble:

- **Three copies** of the **Claim Form**;
- **Three copies** of the **Particulars** of Claim, and
- your **cheque** (if you're not exempt).

Check that you have signed and dated all bits where required.

Put them all into one envelope and post to The Manager at the court you've chosen. (*Send it to a **County Court**, **not** the High Court / Crown Court / Magistrates Court / County Court Money Claims Centre or any other.*)

Then pat yourself on the back... and wait.

BEWARE A COMMON COURT SERVICE ERROR

Court staff handle **very few Equality Act claims** and are often **rusty about the procedures**. Many claimants find that the local Court tells them they should have sent the claim to the County Court Money Claims Centre (*CCMCC*) in Salford.

They are incorrect. If you have claimed a Declaration or an Injunction, you **have to send it to a local court**.

You may have to challenge them by quoting "Practice Direction 7A paragraph 4A.1(1)(b)" which states claims can only be sent to the CCMCC if it "*is a claim **only** for an amount of money.*"

15. NOTICE OF ISSUE AND ACKNOWLEDGEMENT OF SERVICE

When the Court gets round to it, which can be days to a few weeks, you will get a **Notice of Issue** (*in tiny print*) saying your claim was **issued** on X date, it was **posted** on X date, it is deemed **served** on X date and the defendant has until X date to reply.

It will also have the **Claim Number** on it. This is important, as you **must quote** this number on all correspondence and forms. It will also have a lot of other irrelevant bumf on it.

Within the first two weeks, the Defendant will send you and the Court an "**Acknowledgement of Service**". They do that because it gives them an extra **14 days** to write and send their defence.

The Acknowledgement has boxes for the defendant to state they intend to defend **All** of the claim, **Some** of it, or **Admit** the claim.

Every defendant **ALWAYS** says they intend to **Defend the Whole Claim**, even if they don't. I don't know why the Court Service includes different boxes, because the defendant **never** ticks the other boxes. The Acknowledgement is just a formality to give them more time. Don't worry, their statement that they "*intend to defend the whole claim*" **doesn't mean a thing**.

This is prime **posturing** time, by the way. Negotiate with the other side by email, letter or phone, attempting to reach an "out of court" agreement (*though don't let them think you will let them get off lightly!*) If **they** have not started the communications, **you** should start – perhaps by making an offer.

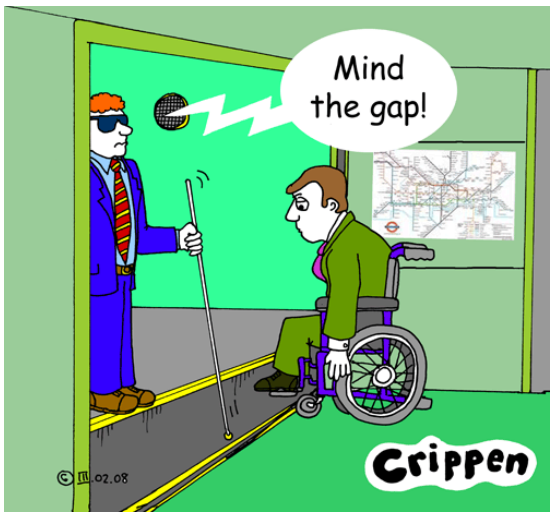
16. DEFENCE

Unless you reach an out-of-court agreement, the Defendant has to **file** (*send to the Court*) and **serve** (*post and/or email to you*) their formal **Defence** within **28 days** of the date of deemed service stated on the Notice of Issue (*or within 14 days if they forgot to do an Acknowledgement of Service.*)

If you get to that deadline and have not had their defence, fill in the "**Request for Judgment**" bit of the Notice of Issue and take it to the court **quick!** Preferably deliver this to the court personally, by taxi, car or bus - you may just win the court case **without having to do anything else**! Otherwise, send in advance by 1st Class Post to arrive on the day the Defence was due.

More likely, however, is that you have either reached agreement, or you are still in the process of trying to reach an agreement and they have submitted a Defence whilst you are still negotiating.

You will need to read their defence, see what you think of it and start preparing relevant counter-arguments. (*Be prepared for your blood pressure to rise as you read it...*)



*Cartoon by **Crippen / Dave Lupton** Cartoons:*

http://www.crippencartoons.co.uk/

17. DIRECTIONS QUESTIONNAIRE

Assuming you have not settled, the Court will send you and the Defendant a "Notice of Proposed Allocation." Hopefully it will say "**Small Claims Track**", but it might say "**Fast Track**". You will be told to fill in "Directions Questionnaire" Form **N180** or **N181** respectively.

Don't worry if your Notice says "Fast Track"; this is only their proposal, and you can usually get it changed to Small Claims.

There are **two key things** you want to achieve with this form.

- You want it allocating to the **Small Claims Track** (*this is crucial or you risk being hit with the other side's costs if you lose.*)
- You want to ensure any **hearing date** misses any pre-booked holidays, hospital admissions etc. (*plus any witness's dates if you have one.*)

If you have Form **N180**, you are lucky, and it is a formality. **N181** is a little more complicated as they are suggesting they allocate the case to the "Fast Track", not the "Small Claims Track". Some of the questions are more complicated as a result, and you need to persuade them to change to the Small Claims Track.

Follow whichever of the following relates to the form you have been given. There are examples and links to blank forms on my website, **https://legal.kingqueen.org.uk** .

DIRECTIONS FORM N180

- Write the **Court**, the **Claim Number**, your **name** and select "**Claimant**".
- If you are comfortable, tick that you are prepared to go to **Small Claims Mediation** (*a formal form of negotiation which I have found generally works.*)
- Add your **contact details**.
- Tick to agree it should be in the **Small Claims Track**.
- State which **court centre** you want it to be at and **why**. (*Practicalities and access are good reasons.*)
- You are not planning to use an **Expert**.
- There is at least one **witness** (*you!*). If you have more, add them.
- List the **dates** you (*or any witness*) cannot do.
- If you need an **interpreter**, state here – but write separately asking the Court to provide it, particularly if it's a **BSL** interpreter, **palantypist** or similar. (*The Court Service is a service provider bound by the Equality Act too, though they do not always realise or remember this!)*
- **Sign** it, and post or e-mail it back to the **Court** before the deadline set in the "Notice of Proposed Allocation", and send a copy to the **Defendant**.

DIRECTIONS FORM N181

You have a bit more work to do if the Court has sent you this form. You **must** get the allocation changed to the Small Claims Track (*or settle or drop the case*) as if the Court allocates it to the Fast Track it is a very serious case, you need representation and you will be hit by the other side's costs if you lose.

- Fill in the **claim number**, "*County Court at X*", your **name** and select "**claimant**".
- A: Tick to say you want to settle, but tick to say you don't need a month's stay.
- B2: State which **court centre** you need it heard in and why (*practicalities and access are good reasons*).
- C: Do not tick either box but write, "**There is no pre-action protocol for cases under the Equality Act.**"
- D1: You probably have not made any **applications**; you will know if you have, otherwise say there are not any.
- D2: **CRUCIAL:** Write that you think it should be in the Small Claims Track and write, "**Please see Section I for reasons**".
- D3: Ignore this.
- E: Tick to say there are no **experts**.
- F: Write your name as the witness, and write, "**The facts stated in the Particulars of Claim.**" If you have other witnesses, add them.
- G: **Trial time** estimate – tick Less than 1 day and write 4 hours (*guideline – most cases are less than this*)
- H: ignore this (leave it blank)
- I: You are probably not planning any **applications**.

In the big box under I, you need to state **why** you think the case should be re-allocated to the **Small Claims Track**. You can copy and paste the following, or write something similar.

I suggest and request this case be allocated to the Small Claims Track for the following reasons.

- *The majority of Equality Act cases for Disability Discrimination are heard using the Small Claims Track.*
- *I do not envisage there being any expert witnesses, or many witnesses.*
- *The facts in the case are not subject to major dispute.*
- *I am claiming less than £10,000. On the basis of the Vento guidelines as amended by Da'bell, I do not envisage recovering more than that.*
- *I am unrepresented, a litigant in person and a disabled person with very limited resources and energy.*
- *I am unable to afford professional representation, or to attain representation through other channels, due to changes in legal funding rules. Current legislation makes it economically unfeasible to get represented for equality legal action. See http://bit.ly/equaljustice2014 .*
- *I am unable to afford the defendants' fees if I lose, and unable to afford the premium for insurance to cover their costs.*
- *Therefore, should this claim be allocated to any other track than the Small Claims, I will be denied access to justice.*
- *I only issued out of desperation after the defendant failed to respond adequately to my Letter Before Action or to deal with my concerns.*
- *This is an important issue that deserves to be heard; if it is allocated to any other track, it will not be.*

- J: You could ask the other side to write **Draft Directions**, but if they don't, I suggest using my template from **https://legal.kingqueen.org.uk** . They are not crucial.
- **Sign** and **date** the form, and add your **contact details**.

Post or email the questionnaire back to the **Court**, and send a copy to the **Defendants**, before the deadline set in the "Notice".

18. DISCLOSURE & OTHER PRACTICALITIES

Once you have sent the allocations questionnaire off, you will eventually receive instructions from the Court by post.

NOTICE OF TRIAL DATE

Sometimes they just provide you with **Notice of Trial Date**, and tell you to pay the **Hearing Fee** by a certain date. You should send a **Help with Fees reference / form**, or a **cheque** (*ouch*).

DIRECTIONS

Sometimes they issue an **Order** (i.e. a Judge's instruction) giving a list of practicalities you must perform. The order is generally very clear and easy to follow. "**Serve**" simply means post or email to the other side. "**File**" means post or email to the Court. (*Check the Court for their e-filing email address if you want to file by email.*)

If you don't understand the Order, or you can't comply with part of it, or you are not able to make the deadline (*e.g. due to illness or holiday*), **write to and/or email the Court as soon as possible** to explain or ask for clarification. The Courts are more flexible and helpful with people who are up front with them.

DISCLOSURE

"**Disclosure**" means telling the Court and the other side what **relevant documents** you have.

The Judge may tell you to send the other side (*and the Court*) a **list** of all the documents that may be relevant or that you want to refer to in Court. (*The other side will also have to.*) You can then ask to see any of the defendant's documents, and they can ask to see yours. (*Sometimes the Court doesn't bother with a list – they tell you to send copies of all documents.*) Make sure you send it before the **deadline** set in the Order – put it in your diary!

If you are unlucky, the Judge may tell you to serve "**Witness Statements**" by a certain date. (*This is easy, though a pfaf.*) You will need to do one yourself. (*My statements are always very short, they simply state that the facts in my Particulars of Claim are true.*)

You may want **another witness** to give a statement about what happened or the effect it had on you. If they are to speak at any Hearing, you **must** get him or her to write a statement; but even if they can't attend in person, a written statement from a supportive witness is useful. Give them an A4 **template document** already set up as follows. (*See my website for an example template.*)

- At the top of each page, include the Heading: "**In the County Court at** [*town*], **Claim number** [*number*], [*your name*] **(Claimant) vs** [*Evil Company Ltd*] **(Defendant)**".
- At the top right corner of the first page, write "**Witness Statement for Claimant** [*your name*] **by** [*witness's initial and surname, if it's your statement this is you!*]; the number of the statement from that witness (*almost certainly to be 1*) (e.g. "*Statement 1 of Mr A Witness*") and the **date** in figures.
- The statement must be in **numbered paragraphs**.
- The first paragraph should read "**I** (*full name*) **of** (*address*), **Claimant in this case**, [*omit if not needed*] [o*ccupation or description*] **make this statement from my own knowledge.**" (*Description: I put "disabled person", "carer"…*)
- In subsequent paragraphs, the witness should state what happened. Chronological order is usually best.
- At the end, write "**I believe that the facts stated in this witness statement are true.**"
- The witness should **sign** immediately below, then underneath write their **full name**, and the **date** in figures.
- Number all pages at the bottom "**Page X of Y**" – to ensure they don't go astray.

Send them to the Court and to the Defendant before the deadline.

19. THE FINAL HEARING

It is very rare that cases get this far. Of the 40+ I have taken myself, perhaps four reached a face-to-face final hearing; I settled every other through out-of-court offers or mediation.

NEGOTIATE

You should continue to negotiate with the other side, right up to the hearing if necessary. Cases often settle quite literally at the door of the court.

If you don't settle, you will have to make a decision: either **withdraw** your case (*via form* **N279 - Notice of Discontinuance**) or proceed to **trial**.

NB: unless the other side is behaving pig-headedly and refuses to see the obvious (*which does happen quite frequently!*)**, the fact the dispute has gone all the way to trial MAY be an indication that your case is not strong enough, or that their defence is too good.**

Think seriously before carrying on – but don't give up if you think you are right and can win.

BEFORE THE HEARING

Don't be over nervous. You have to be prepared and on the ball, but hearings in the Small Claims Track are relatively informal. The Judge will be used to helping litigants in person.

Before the day, make sure you let the Court know (in writing) about any access needs (*wheelchair access, hearing loop, information in alternative formats etc.*) Re-read all the paperwork.

On the day, wear "smart casual" comfortable clothes. (*There is no need for a three-piece suit!*). Ensure you take **key documents.** Leave **multitools / Swiss Army knives** at home (*a pain for wheelchair users, but Court security confiscates them.*)

Arrive at the Court **at least half an hour** before the hearing (*preferably* **much more**) to allow time to get through security (*you may be searched*), to find where you are going, to ensure your **access needs** are met, and to attempt final negotiation with the other side. **Turn your mobile FULLY OFF** (*not just on silent*)

Register with the "**Usher**" on arrival. (*Ask at reception if need be*.)

Identify the other side's representatives and consider trying to negotiate. Most courts have **private rooms** you can use to prepare your case or negotiate with the other side – ask the usher.

Most cases are heard in the **Judge's chambers** (*posh name for his/her office*) but some will be heard in a **courtroom**. There will be **hearing lists** on a notice board in the waiting area, giving hearing times, rooms, the claimant and defendant's names, and the name of the **Judge**. The Judge is nearly always a **Deputy District Judge** (**DDJ**) or a **District Judge** (**DJ**), both properly addressed in Court as "**Sir**" or "**Madam**". (*It's very unusual for it to be a* **Circuit Judge**, *but they are* "**Your Honour**".)

It is **rare**, but not unheard of, for the **public** or **press** to attend.

THE HEARING

You will be taken into the room, and the judge will either **already be there** (*nod politely to him/her*) or will be ushered in.

Judges have **wide discretion** on how they run Small Claims hearings, but they will often follow a standard format. If so, (s)he will ask you to **present your case**, then the opposition will give theirs. There may be the opportunity to **question** each other (*and **witnesses**, if there are any*), and/or the Judge may ask his/her own questions. Both sides may then **summarise**.

Follow the Judge's directions, and it will be fine. (*Honestly.*) It is a nervy situation, but most judges are very understanding of this and want to make things as easy as possible for everybody. If you need a break, some water, or have any other access needs, **ask.**

Try to raise things in a clear, logical order:

- **Your status** as a disabled person under the Equality Act
- The **other side's status** as a service provider under the Act
- **What happened**
- How the **service you received** was **worse** than that a **non-disabled person** would receive
- What **duty** the other side has **failed to comply** with:
    - The duty not to **discriminate**
    - The duty not to **indirectly discriminate** (*where rules or procedures have a disproportionate impact on you as a disabled person*)
    - The duty to make **reasonable adjustments**:
        - To **physical features** e.g. buildings
        - To **provisions, criteria or practices**
    - The duty to provide **auxiliary aids**
- The **impact** of the discrimination on you (*any loss or inconvenience, and any emotional effect e.g. anger.*)

THE JUDGMENT

Once everybody has finished, the Judge may leave for a short period, or he/she may just launch straight into the judgment.

He/she will go "round the houses". They will describe the facts of the case, summarise the situation, and summarise both sides' arguments. It will be a lengthy spiel even for straightforward cases. (*I am sure they do this just to up the anticipation!*) They will eventually describe **their judgment on the various issues**.

If you have won ANY of your points, you have won the case; you don't have to have proven them all. The judge will then state what compensation you should be awarded. (*I have never known them award a "declaration" or an "injunction", even though I have always applied for one.*)

If you have lost – bad luck. Take it on the chin. **Don't** try to appeal; or if you do, seek professional legal representation.

The judge will then ask if there is "anything else he/she needs to determine today". This means two things: the **losing party** may ask for permission to appeal (*as I say, don't!*) and the **winning party** can apply for costs.

If you've **lost**, stay gingerly silent, hoping nothing is said about costs (*which will be minimal*)– but if you **win**, you can ask for **transport costs**, **lost earnings** while you've been in Court, your **court fees** (*unless you were exempt*), and nothing else.

A few days later you will receive a copy of the judge's **Order** stating judgment for the **claimant** or for the **defendant**, and (*if you have won*) the amount of compensation. The Defendant must send you any compensation within **two weeks** of the order.

Pat yourself on the back for forcing a provider to take their obligations seriously!

If you are anything like me, you will then take on another case...

20. ADVANCED TACTICS

The following **shouldn't** be necessary and **shouldn't** make any difference. You can **safely ignore this section** and still conduct the case without any issue whatsoever. However, sometimes the posturing inherent in the following tactics forces the other side to reconsider, and may improve any out-of-court agreement.

APPLICATION TO STRIKE OUT THE DEFENCE

You can apply for the defence to be "struck out" (*so the defendant has to write a new one or you win by default*). The basis must be one or more of the following:

- The defence discloses **no reasonable grounds** for defence.
- The defence is an **abuse of court processes** or is otherwise likely to obstruct the just disposal of the proceedings.
- The defendant has **failed to comply** with a rule, practice direction or court order.

If you think one of the above could be true (*for example, the defence contains facts which, even if true, are not a legally recognisable defence*) you may choose to apply for the defence to be struck out, **even if you don't think the application will be successful**. (*It is very unlikely to be successful – strike-outs are extremely rare.*) This may bring the following advantages:

- It's posturing on your part, jars the other side and **may** make them take you more seriously
- There will likely be a preliminary hearing to determine whether the case should be struck out. This can be handy to discuss the handling of the case etc.

Use **Application Notice N244**, send a copy to the other side and a copy to the Court with a fee exemption claim, or the fee (**£255** as of September 2017, check the current fee in **EX50**).

REQUEST FOR FURTHER INFORMATION

Known as a "**Part 18 request**" (*after Part 18 of the Civil Procedure Rules*), this allows you to formally ask the Defendant questions on issues relevant to your case. Perhaps use this after you have had their defence, if you feel there is information of relevance that they **have not disclosed**. They have to respond, unless your questions are ridiculous (*don't send ridiculous questions, it will just weaken your position.*) In theory if they don't respond, you can apply to the Court to enforce your right to this info – but I have never done this.

Send it in writing – I usually use **Email**, but letter and fax would do. Don't include anything else – the email should just contain the request.

- State in the Subject (*or the top of the letter*) that this is a request for information under **Part 18** of the Civil Procedure Rules.
- Give the **name of the Court**, the **case number**, and the **title of your case** – i.e. **(*your name*) (Claimant) vs (*evil company*) Defendant**
- In **numbered paragraphs**, set out **each specific request** for information or clarification
- State **when** they must respond by – this has to be a Reasonable Period. A Reasonable Period is generally **two weeks.**

On occasion, the **defendant may send you** a request for information. It is straightforward to answer – just be factual. If you think a question is unnecessarily intrusive, irrelevant or vexatious, you can refuse to answer it.

Check my website for an example Request and a Refusal: **https://legal.kingqueen.org.uk**

PART 36 OFFER TO SETTLE

This is a formal way of making an **out-of-court offer**. It is theoretically not relevant to the Small Claims Track; however, the other side will be used to this procedure, which can be useful.

In other tracks, in some circumstances Part 36 offers can make the other side liable for costs they would not otherwise have to pay. They are therefore a useful bargaining tactic.

Either side can put in a Part 36 offer or offers (*you can send more than one*). This puts pressure on the other side to settle or face consequences. In the small claims track there aren't any consequences, but the other side don't always realise this.

You can use **Form N242A** for this, but you don't have to. If you don't want to use the form:

- Send the offer to the defendant by email or letter containing **only** the offer and no other correspondence. (*Send any other correspondence separately.*)
- Write at the top that this is a **Part 36 offer**.
- State that the offer is open for **21 days** (*the legal minimum*), or until the date of the hearing if that is sooner.
- State this offer is in respect of the **whole claim**.
- State the terms of your offer clearly and succinctly, in numbered paragraphs.

I have examples of Part 36 Offers made using the form and by email on my website, **https://legal.kingqueen.org.uk**

ASSESSORS

The **Code of Practice** (*see my website*) says:

> *14.14. In cases about unlawful acts a judge or sheriff (in Scotland) will usually have to appoint an 'assessor' to assist him or her. These are persons of skill and experience in discrimination issues who help to evaluate the evidence. The Act says that unless the judge or sheriff is satisfied that there are good reasons for not doing so, they must appoint an assessor.*
>
> *14.15. It would not be a good reason that the court believes itself capable of hearing the issues in the case without an assessor or that having an assessor would lengthen proceedings.*

90% of the time the Court and the defendants aren't aware of this rule, or choose to ignore it. This is probably just as well, as the Court Service generally has no idea how to find such a person; and as I've never known an assessor help (*in the one case that we did have one.*)

If the hearing isn't going well or you want to stop the hearing so you can negotiate more, or put pressure on the other side by making them spend time attending multiple hearings, you can use this as an "ace card".

Ask the Judge (*politely*) "**Where's the mandatory assessor?**" You will usually have to prove to the Judge that one is mandatory, as they usually don't know this. Take a copy of the Code or Practice with you (*on your Kindle or similar perhaps, it's quite big to print out!*) and the Equality Act s.114(7) & (8) (*which says the same as the Code but in more difficult language*) and give it to the Judge.

He/she may be annoyed and ask you why you haven't raised this before – but you're the Litigant in Person and it's not your duty to tell the Court its legal duties!

"I DON'T HAVE ANY MONEY"

As previously noted, defendants sometimes try and scare claimants off by claiming that if you lose, you'll be liable for their substantial legal costs. They commonly do so by phrases such as "*We reserve the right to bring your refusal to accept our out-of-court offer to the attention of the Court when it comes to costs*" - or they can be a lot more direct. They may serve a list of their "costs" in legal time etc. on you, often called a "Precedent H", and these costs can be scary and massive (tens of thousands of pounds.)

You're going to get the case allocated to the small claims track, so they won't get their costs anyway, so you should resist such bullying tactics, but another useful tactic I have used a lot is to call their bluff. If you have no money, it can be a useful tactic to say to the defendant:

> *"I don't have any money. Even if you win the case, you won't get any money off me because I don't have any and it would cost you far more to make me bankrupt or take other such action than you would ever recover from me. I am therefore not put off by your threat of costs, and it is in your interests to settle this case as expeditiously as possible."*

Not everybody is in this position – people with mortgages and families would be much less able to state the above, I should imagine – but if you can say the above with all honesty, it's a great tactic. It really deflates defendants and wrong-foots them because it disarms one of their main "weapons" / scare tactics. They are unlikely to have come across anybody else who has said this to them. It can make them suddenly much more conducive to settling the case.

21. CONCLUSION

Don't listen to people who accuse you of doing it for the money, or looking for cases you can fight – they are just bitter at you turning the tables, asserting and enforcing your rights.

I wish you luck in your use of the Equality Act for the benefit of disabled people. I think you should be applauded.

If you need an alternative format, contact me using the form on my website,

https://contact.kingqueen.org.uk

(*Sorry, I hate forms too, but I hate spam more…*)

NB: I am **NOT** able to provide legal or other advice about your situation; if you need legal advice, please contact the **Citizens Advice Bureau**, your nearest **Law Centre** or a **solicitor**.

Current document version: 1.7, September 2017