

# Goods and Services

## How do I make a claim?

A guide to taking a Part 3 DDA case to the County Court



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# Introduction

Under Part 3 of the Disability Discrimination Act (DDA), it is against the law for a provider of goods, facilities or services, or a landlord or other person who is disposing of, or managing, premises, to discriminate against you because of your disability. The DRC Helpline (see the back cover for details) can give you advice and information about the DDA and about your claim. A local law centre, Citizens Advice Bureau or solicitor may also be able to give you legal advice and represent you (see page 51).

This booklet has been written to help you.

# Can I make a claim?

## 1. Goods, facilities, services and premises

### Where to find the law

Part 3 of the Disability Discrimination Act contains the law relating to disability discrimination in relation to goods, facilities or services. The Disability Rights Commission has issued a Code of Practice (Code of Practice, Rights of Access, Goods Facilities Services and Premises) which describes the duties of those providing services to the public and those selling letting or managing premises under Part 3 of the Act. Although it is not the law itself, the Code has to be taken into account by courts and tribunals where relevant. It is advisable that you consider the code before embarking on a claim under the Act. It is available to download from the DRC website ([www.drc-gb.org](http://www.drc-gb.org)) or can be purchased from The Stationery Office (0870 600 5522).

### Goods, facilities or services

The DDA affects everyone who provides goods, facilities or services to the public, or to a section of the public in the United Kingdom. It does not matter whether the services are provided free or in return for payment.

Examples of goods, facilities and services covered by the Act include those provided to the public by local councils, Government departments and agencies, the emergency services, charities, voluntary organisations, hotels, restaurants, pubs, post offices, banks, building societies, solicitors, accountants, telecommunications and

broadcasting organisations, public utilities (such as gas, electricity and water suppliers), national parks, sports stadiums, leisure centres, advice agencies, theatres, cinemas, hairdressers, shops, market stalls, petrol stations, telesales businesses, places of worship, courts, hospitals and clinics.

Private members' clubs are not covered by Part 3 of the Act because they do not provide services to the public or a section of the public. Simply calling a service a 'club' does not mean that the courts will consider it to be a private club – there must be a genuine process of selection, usually by a club committee operating the club rules.

Where a club is genuine, and does provide services to the public then the Act applies to those services.

### **For example**

A private golf club refuses to admit a disabled golfer to membership. This is not covered by the Act. However, if the golf club hires out its facilities for a wedding reception, the Act applies to this service. If the club allows non-members to use the course, a refusal to allow a disabled golfer to play is likely to be subject to the Act.

Part 3 of the Act does not apply to education, which is covered by Part 4 of the Act. However, Part 3 does cover non-educational services such as a conference, which is open to the public, even where it is provided by a school, college or university.

Any service involving the use of any means of transport (for example, taxis, hire cars, buses, coaches, trains, aircrafts and

ships) is also excluded from Part 3. However, services provided in transport premises or related to transport, such as timetables, access to telephone information, booking facilities, waiting rooms etc at airports, ferry terminals and bus, coach or train stations, would be covered by this part of the Act. Assistance at transport terminals, such as assistance from an airline check-in desk to the point of departure, would also fall within the Part 3 provisions.

### **Selling, letting or managing premises**

The Act also covers landlords and other persons who are disposing ie selling or letting, or managing, premises.

Premises include land of any description. For example, dwelling houses, office blocks, flats, bedsits, factory premises, industrial and commercial sites, and agricultural land are all covered.

There are two main exclusions from the premises provision of Part 3 of the Act:

- **Owner-occupier.** Where an owner-occupier sells or lets his or her premises privately.
- **Small dwellings.** This exemption applies where the owner of premises (or a close member of his or her family) lives on the premises and shares accommodation with others who are not members of his or her household. The premises must be 'small' ie:
  - only the owner (or a close relative) live in the accommodation and there is accommodation let on a separate tenancy, or similar agreement, for normally no more that two other households, or
  - there is not normally residential accommodation on the premises for more than six people (excluding the owner-occupier (or a close relative) and his or her family).

## 2. Am I protected by the Act?

The Act sets out the circumstances in which a person is 'disabled' and so can receive protection. It says you are disabled if you have:

- a mental or physical impairment.
- this has an adverse (ie bad) effect on your ability to carry out normal day-to-day activities.
- the adverse effect is substantial ie not minor or trivial.
- the adverse effect is long-term (meaning it has lasted for 12 months, or is likely to last for more than 12 months or for the rest of your life).

There are some special provisions, for example:

- Some impairments do not count as a disability, such as alcohol addiction and kleptomania.
- Severe disfigurements are counted, so are certified blindness and partial sight.
- If your disability has substantially affected your ability to carry out normal day-to-day activities, but doesn't any more, it will still be counted as having that effect if it is likely to do so again.
- If you have a progressive condition such as HIV or multiple sclerosis or arthritis, which is likely to be increasingly debilitating, you will be treated as having a disability from the point when you first experience symptoms which affect your ability to carry out normal day-to-day activities.
- Past disabilities are covered.
- If you are registered, or are registerable, as blind or partially sighted you will automatically be deemed to be disabled.

## Normal day-to-day activities

The impairment must have an adverse effect on 'normal day-to-day activities'. At least one of these areas must be substantially affected:

- mobility
- manual dexterity
- physical coordination
- continence
- ability to lift, carry or move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand
- understanding of the risk of physical danger.

It's really important to think about the effect of your impairment without treatment. The Act says that any treatment or correction should not be taken into account, including medical treatment or the use of a prosthesis or other aid (for example, a hearing aid). The only things which are taken into account are glasses and contact lenses.

The important thing is to work out exactly how your impairment affects you. Remember to concentrate on the things that you **cannot** do or can only do with difficulty, rather than on the things that you **can** do.



For example, if you have a hearing impairment, being unable to hold a conversation with someone talking normally in a moderately noisy place would be an adverse effect. Being unable to hold a conversation in a very noisy place such as a busy intercity railway booking office would not.

If your impairment affects your mobility, being unable to travel a short journey as a passenger in a vehicle would be an adverse effect. So would only being able to walk slowly or with unsteady or jerky movements. But having difficulty walking without help for 1.5 kilometres or a mile without having to stop would not.

### **Medical evidence**

If the service provider or landlord does not agree that you are disabled, it is useful to get some evidence from your GP or Consultant about your disability, the treatment for it, and the likely effect of your disability if you were not having treatment.

### **Legal advice and representation**

If you have a low income, you may be able to obtain funding to pay for a solicitor to advise you and prepare your case. You may also qualify for funding to cover representation at a court hearing. For further details see page 9. 'Have I been discriminated against?'

### 3. Have I been discriminated against?

#### **Have I been discriminated against in accessing goods, facilities and services?**

It is against the law for a service provider to discriminate against a disabled person:

- by refusing to provide (or deliberately not providing) any service which it provides (or is prepared to provide) to members of the public
- in the standard of service which it provides to the disabled person or the manner in which it provides it
- in the terms on which it provides a service to the disabled person
- in failing to make a reasonable adjustment in circumstances which make it impossible/unreasonably difficult to use the service.

#### **Have I been discriminated against by a landlord or other person who is disposing of (ie renting, leasing or selling), or managing, property?**

It is against the law for a person with power to dispose of any premises to discriminate against a disabled person:

- in the terms on which he or she offers to dispose of those premises to the disabled person
- by refusing to dispose of those premises to the disabled person
- in his or her treatment of the disabled person in relation to any list of persons in need of premises of that description.

It is against the law for a person managing any premises to discriminate against a disabled person occupying those premises:

- in the way he or she permits the disabled person to make use of any benefits or facilities
- by refusing (or deliberately omitting) to permit the disabled person to make use of any benefits or facilities
- by evicting the disabled person or subjecting the disabled person to any other detriment such as harassment.

It is also against the law for any person whose licence or consent is required for the disposal of any leased or sub-let premises to discriminate against a disabled person by withholding that licence or consent for the disposal of the premises to the disabled person.

### **What does 'discriminate' mean?**

For your claim to succeed, a court will have to decide whether you were discriminated against. There are two main types of disability discrimination: (a) less favourable treatment, and (b) failure to make a reasonable adjustment. Both types can apply in the case of service provision; only the first type can apply in respect of premises that are being let, sold or managed.

#### **(a) Less favourable treatment**

A service provider or landlord discriminates against a disabled person if it:

- treats the disabled person less favourably than other people (for a reason related to his or her disability) and cannot justify the treatment (see below).

### **For example**

A football club admits visiting supporters to its stadium. However, one visiting supporter is refused entry because he has cerebral palsy and has difficulty controlling and co-ordinating his movements. No other visiting supporter is refused entry. This would amount to less favourable treatment for a reason related to his disability and, unless the football club can justify its actions, would be an unlawful refusal of service. It would be irrelevant that another supporter who cannot control his movements (for example, because he is drunk) would be treated in the same way. The treatment in this case is for a reason relating to his disability and so there will be discrimination unless the treatment can be justified.

### **For example**

A landlord asks a deaf person for a non-refundable deposit as a condition of her renting a flat. Other tenants are simply asked for a refundable deposit. This is less favourable treatment for a reason relating to her disability. Unless justified, this is likely to be unlawful.

## **(b) Duty to make reasonable adjustments**

Service providers also discriminate if:

- without being able to justify it, they fail to comply with a duty to make reasonable adjustments imposed on them in relation to the disabled person.

There are three main types of reasonable adjustment which the service provider has to consider:

1. Changes to practices, policies and procedures which make it impossible or unreasonably difficult for disabled people to make use of its services.

### **For example**

A DIY store has a policy of not allowing dogs onto the premises. Members of staff are instructed to prevent anyone with a dog from entering the superstore. The 'no dogs' policy is enforced in practice by this procedure. The policy makes it unreasonably difficult for disabled people accompanied by a guide or assistance dog to use the store. The store has a duty to take such steps as are reasonable for it to have to take to avoid that effect and to make its services accessible to disabled people. It decides to amend its 'no dogs' policy by allowing an exception for disabled people accompanied by a guide or assistance dog. This is likely to be a reasonable step for the store to have to take.

2. Overcoming a physical feature making it impossible or unreasonably difficult for disabled people to make use of the services by:
  - providing a reasonable alternative method of making its services available to disabled people; or
  - from 1 October 2004, removing, altering, or providing a reasonable means of avoiding the feature.

Physical features will include steps, stairways, building entrances and exits (including emergency escape routes), internal and external doors, gates, toilets and washing facilities, public facilities (such as telephones, counters or service desks), lighting and ventilation, lifts and escalators, floor coverings, signs, furniture, and temporary or movable items (such as equipment and display racks).

### **For example**

- A theme park includes, as an attraction, a lakeside walk. However, a stile prevents access to the lakeside walk for those with mobility difficulties. The owners of the theme park remove the stile and replace it with an accessible gate. This is likely to be a reasonable step for the service provider to have to take.
- A small self-service pharmacist's shop has goods displayed on high shelving separated by narrow aisles. It is not practicable to alter this arrangement. The goods are not easily accessible to many disabled people. The shop decides to provide a customer assistance service. On request, a member of staff locates goods and brings them to the cash till for a disabled customer. This is the provision of a service by an alternative method, which makes the service accessible for disabled people and is likely to be a reasonable step for the shop to have to take.

3. Provision of auxiliary aids and services if they would enable (or make it easier for) disabled people to make use of its services.

### **For example**

A bank provides information on audio tape about its savings accounts. A customer with a visual impairment can use the audio tape at home or in a branch to decide whether to open an account.

## **4. Can the discrimination be justified?**

Discrimination in access to goods, facilities, services or premises can be justified on certain grounds. Where this is so, your claim will not succeed.

### **Goods, facilities and services**

Treating a disabled person less favourably for a reason related to disability or failure to make a reasonable adjustment is justified where the service provider reasonably believes that one or more of the following conditions is satisfied:

- the treatment was necessary in order not to endanger the health and safety of any person, including the disabled person.

### **For example**

An amusement park operator refuses to allow a person with muscular dystrophy onto a physically demanding high speed ride. Because of her disability, the disabled person uses walking sticks and cannot stand unaided. The ride requires users to brace themselves using their legs. The refusal is based on genuine concerns for the health and safety of the disabled person and other users of the ride.

- The disabled person is incapable of entering into an enforceable agreement, or of giving informed consent.

### **For example**

A person with senile dementia applies for a mortgage loan from a building society to finance the purchase of a house. Although she has the means of keeping up with the mortgage loan repayments, the building society has sound reasons for believing that the disabled person does not understand the nature of the legal agreement and obligations involved. The building society refuses the application. This is likely to be justified.



- The refusal to provide (or deliberately not providing) a service to the disabled person was necessary because the service provider would otherwise be unable to provide the service to other members of the public.

### **For example**

A tour guide refuses to allow a person with a severe mobility impairment on a group tour of old city walls because he has well-founded reasons to believe that the extra help that he would have to give the disabled person would prevent the party from completing the tour. This is likely to be justified.

- The inferior service the disabled person received was necessary in order to be able to provide the service to that person or other members of the public.

### **For example**

A hotel restricts a wheelchair user's choice of bedrooms to those with level access to the lifts. Those rooms tend to be noisier and have restricted views. The disabled person would otherwise be unable to use the hotel. The restriction is necessary in order to provide the service to the disabled guest. This is likely to be justified.

- The disabled person was charged more than other people because of the greater cost in providing the service to the disabled person. This does not, however, apply where the extra cost results from the provision of a reasonable adjustment.

### **For example**

A disabled customer orders a bed which is specifically made to accommodate her disability. The store charges more for the bed than it does for a standard one, as the specially made bed costs more to make. This is likely to be justified.

Special rules apply to the provision of insurance services, guarantees and deposits, see below.

### **Premises**

Similar justification grounds apply in respect of premises. Treating a disabled person less favourably for a reason related to disability may be justified where the alleged discriminator reasonably believes that one or more of the following conditions are satisfied:

- the treatment is necessary so as not to endanger the health or safety of any person, including the disabled person.

### **For example**

A landlord refuses to let a third floor flat to a disabled person who has had a stroke resulting in mobility problems and who lives alone. The disabled person is clearly unable to negotiate the stairs in safety or use the fire escape or other escape routes in an emergency. The landlord reasonably believes that there is a health and safety risk to the disabled person. The reason is likely to be justified.

- The disabled person is incapable of entering into an enforceable agreement, or of giving informed consent.

### **For example**

The owner of a lock-up garage refuses to rent it to a person with a severe learning disability. Despite the owner attempting to explain that she expects to be paid a weekly rent for the garage, the disabled person appears incapable of understanding the legal obligation involved. The garage owner reasonably believes that the disabled person is incapable of entering into an enforceable agreement. The refusal to rent the garage is likely to be justified.

- In a case of alleged discrimination by a person managing premises:
  - in the way a disabled person occupying the premises is permitted to make use of any benefit or facility; or
  - by refusing (or deliberately omitting) to permit a disabled person occupying the premises to make use of any benefit

where the treatment is necessary for the disabled person or occupiers of other premises forming part of the building to make use of the benefit or facility.

## **For example**

A landlord refuses to allow a disabled tenant with a severe learning disability to use the shared laundry facilities in a block of flats because the disabled tenant frequently breaks the washing machines. She does not understand the instructions. The landlord's refusal is likely to be justified.

Special rules apply to deposits, see below.

## **Insurance**

Disability-related less favourable treatment in the provision of insurance services is justified if all the following conditions are satisfied:

- it is in connection with insurance business carried on by the service provider
- it is based on information which is relevant to the assessment of the risk to be insured
- the information is from a source on which it is reasonable to rely; and
- the less favourable treatment is reasonable having regard to the information relied on and any other relevant factors.

### **For example**

A disabled person with a history of cancer applies for a life insurance policy. On the basis of clear medical evidence from a cancer specialist that the applicant is unlikely to live for more than six months, the insurance company refuses to provide life insurance. In the circumstances, the refusal of insurance is likely to be justified because all the conditions above are satisfied.

### **Guarantees**

A service provider will be justified in refusing to provide a replacement, repair or refund under a guarantee if the item covered has been damaged for a reason related to a person's disability and the damage is beyond the level at which the guarantee would normally be honoured. The refusal must also be reasonable in all of the circumstances of the case.

### **For example**

A disabled person with a mobility impairment buys a pair of shoes from a shoe shop. He wears out the left shoe after a few months because his left foot has to bear most of his weight. The store refuses to provide a new pair of shoes because the old pair has undergone abnormal wear and tear. This is likely to be justified.

## Deposits

A service provider or a person with power to dispose of any premises will be justified in refusing to refund some or all of a deposit if a disabled person causes damage for a reason related to that person's disability and the damage is above the level at which the provider or landlord would normally refund the deposit in full. The refusal to refund all or some of the deposit must also be reasonable in all the circumstances.

### For example

A disabled person hires an evening suit from a menswear hire shop. The hire shop requires all customers to pay a deposit against damage to the hired clothing. Because of the nature of his disability, the disabled person wears a leg calliper. This causes abnormal wear and tear to the suit. When the suit is returned, the hire shop retains part of the deposit against the cost of repairing the damage. This is likely to be justified.

## 5. Victimisation

Anyone, not only people with disabilities, can claim victimisation if they have been treated less favourably because of something they have done in connection with the DDA. For example:

- bringing proceedings under the Act
- giving evidence or information in connection with such proceedings.

### For example

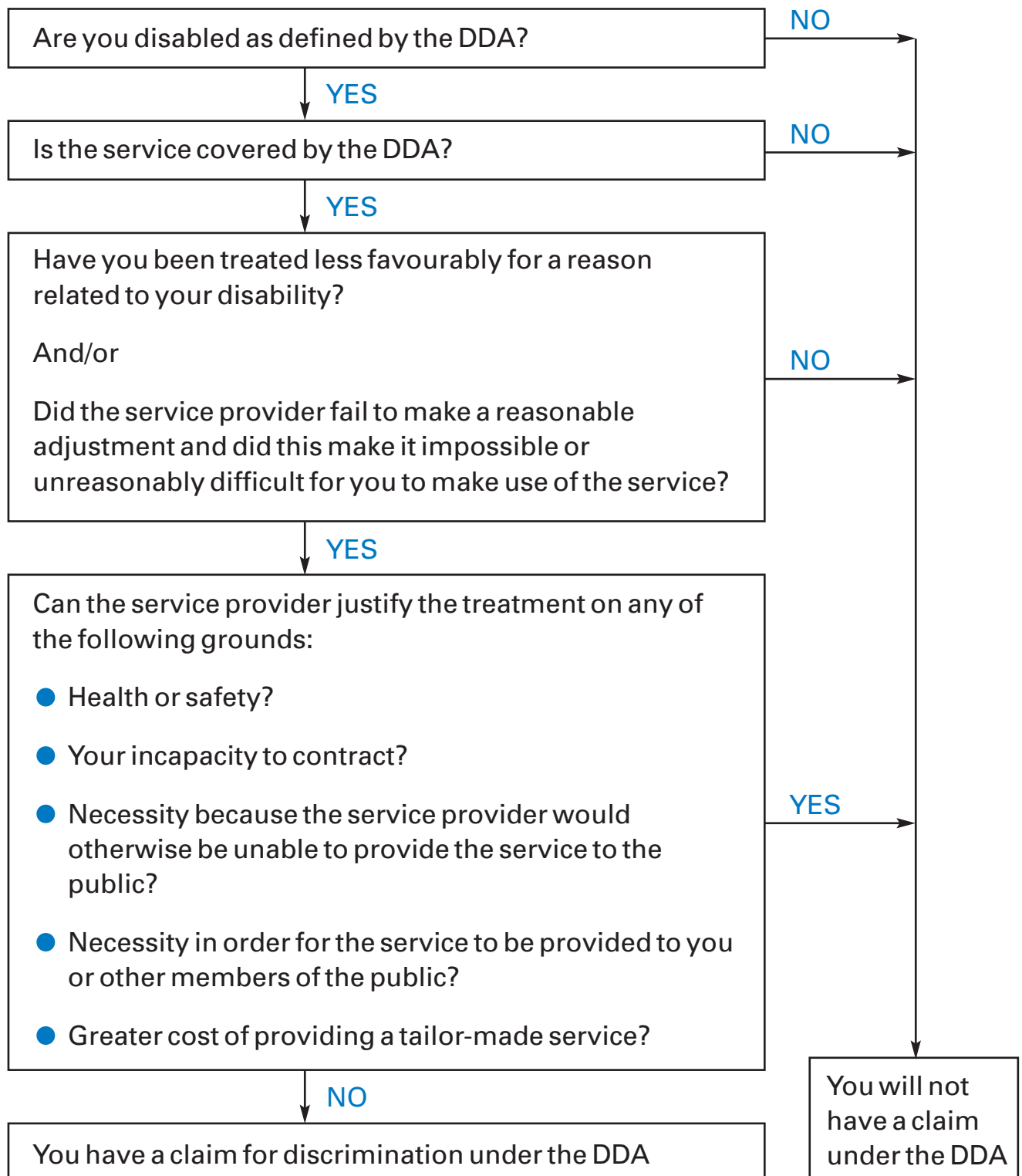
A non-disabled person acts as a witness in a complaint by a disabled person of disability discrimination by a police officer. Later, in retaliation, other police officers refuse to provide to the non-disabled person local crime prevention services which the police provide to the public. This victimisation is likely to be unlawful.

## 6. Time limit

Claims about discrimination in the provision of goods, facilities and services must be begun within six months minus one day from the date when you were discriminated against. Where a claim relates to an act which continues over a period, the act is treated as done at the end of that period.

# Who can make a claim?

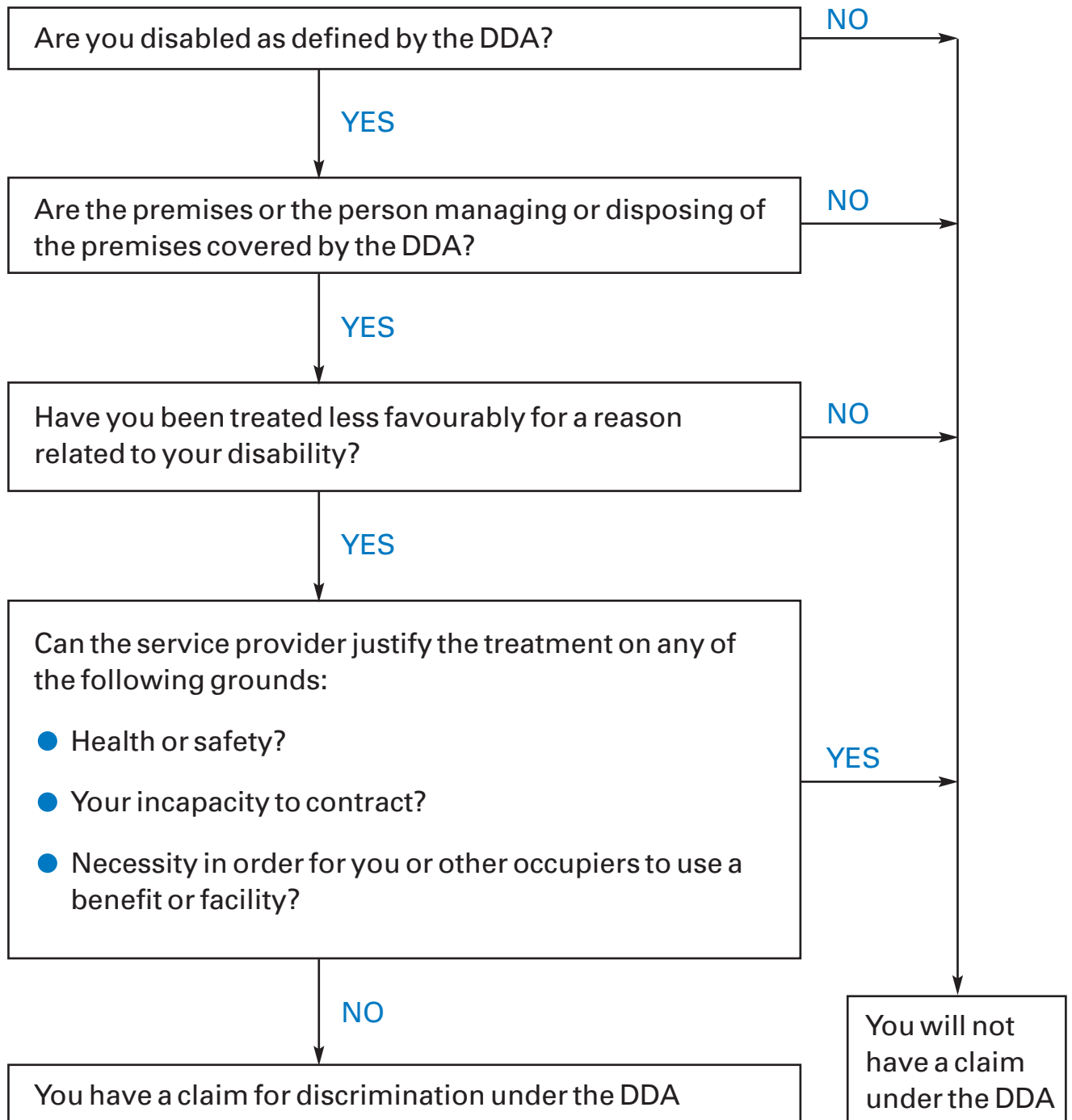
## Goods, facilities and services





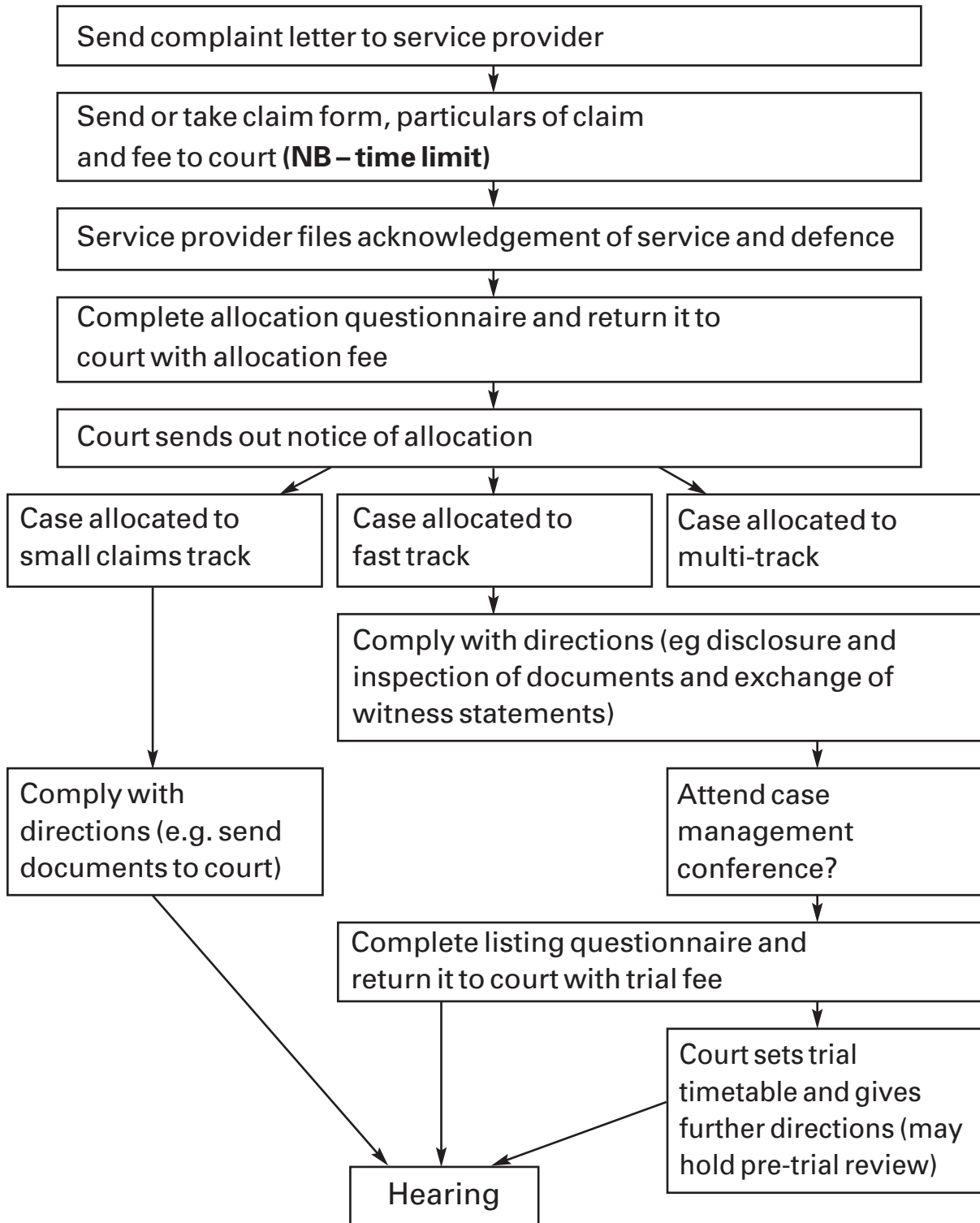
# Who can make a claim?

## Management and disposal of premises



# Making a claim

(England and Wales)



# Making a claim

The complaints process for goods, services and facilities is the same as the process for bringing complaints in respect of the disposal or management of premises. Claims may be brought only in the county court.

Part 3 of the DDA applies to the county court in the same way that it applies to any other service provider. It too is under a duty to make reasonable adjustments and it would, for example, be reasonable for the court to provide an audiotape or Braille for people with impaired vision. If your disability makes going to court or communicating difficult, you should contact the Customer Service Officer at the court that is dealing with your case. If you need further information you can contact the Court Service Disability Helpline, see page 52 for contact details.

## 1. What should I do before I start a court claim?

Before you start a court claim, you should be prepared to exchange information with the service provider and try to avoid the need for the case to go to a hearing. The court will expect you to act reasonably.

In some cases it may be possible to negotiate with the service provider with a view to resolving the dispute. For example, the service provider may offer you money or an apology, or agree not to discriminate in the future. This can save you time and money, and spare you the uncertainty of bringing a court case. If your case concerns a failure to make a reasonable adjustment, you may be able to get the service provider to agree to the adjustment or, for example, to undertake and to act upon a disability access audit.

If you do agree a settlement, this will be binding and you will not be able to change your mind and pursue your claim at a later date.

If you are unable to resolve the dispute, you need to think about whether you can afford to go to court (see 'How much will it cost to bring a claim?' below). You should also be aware that, even if you win your case, you are unlikely to recover any money from the service provider if they have become bankrupt or ceased trading.

### **Initial complaint letters**

Before you apply to the court, you should send a letter of complaint to the service provider. You will need to make sure that you have the correct address: if the service provider is a limited company, you will be able to get details from Companies House. If your complaint is about a local branch of a company, then you can send the complaint both to the branch itself, and to the Head Office, to ensure that it will be dealt with at both levels.

Setting out the issues in a letter can help you to reach a settlement with the service provider – and even if you do end up making a court claim, the service provider's reply to your letter may give you information that helps your case.

### **The time limit for applying to court is six months minus one day from the date when you were discriminated against.**

You should send your complaint letter well within this deadline so that you have time to consider any response, negotiate with the service provider if appropriate, and decide whether or not you still wish to bring a claim.

Your letter should say what your disability is and describe the discrimination that you believe took place and the effect that it had on you. You may want to ask why you were treated in that way and what arrangements the person makes for providing a service to people with a similar disability to yours.

If your claim is one relating to a failure to make reasonable adjustments, you will need to indicate what sort of duty the service provider has which is relevant in your case (for example, a duty to change policies, practices and procedures so that you can enter premises with an assistance dog); how this duty has not been met; and how this makes it impossible or unreasonably difficult for you to use the service.

Include details of any financial loss you have suffered. If, for example, a holiday company refused your booking and you had to book with another company at a higher cost, say so in your letter. You should enclose copies of relevant documents, such as booking forms or receipts, making sure that you keep the originals. If you know of any documents that the service provider has, and that you think may be relevant to your claim, ask for copies. These might include things such as a copy of any disability policy; details of any adjustments made to facilitate disabled access; and details of how the service provider believes that access has been facilitated.

The letter should ask the service provider to acknowledge receipt promptly and to give a full written reply by a specified date. One month from the date of your letter will normally be a reasonable period for a full response. Say in your letter that you will issue a county court claim if the service provider does not reply by the date that you have given.

## 2. How much will it cost to bring a claim?

Before you start a county court claim, you need to think about court fees and the cost of any legal advice or representation. If you have witnesses to support your case, you should be prepared to pay their travelling expenses and their loss of earnings for attending the hearing.

You may be able to recover some of your fees and expenses from the service provider if you win your case but this will depend on the track that your claim is allocated to – see ‘What if I am successful?’ below. There are three tracks – the small claims track, the fast track and the multi-track – and different rules apply to each one.

You also need to be aware that the court can order you to pay some of the service provider’s costs and expenses if you lose your claim. In a fast track or multi-track case, these can be substantial – see ‘What if I am unsuccessful?’ below.

### **Legal advice and representation**

You do not necessarily need legal advice or representation to bring a county court claim. Most disability discrimination cases are allocated to the small claims procedure, which is designed to be quick, cheap and easy to use without advice from a solicitor. If, however, you are claiming more than £5,000, you may wish to take legal advice.

If you have a low income, you may be able to get funding from the Community Legal Service (CLS) – previously known as legal aid – to pay for a solicitor to draft your claim form, write letters and prepare your case. You may also be able to arrange representation at the hearing. A solicitor displaying the CLS logo will be able to tell you whether or not you qualify for CLS funding.

If you are not eligible for CLS funding, some solicitors may be willing to represent you on a 'no win, no fee' basis. Alternatively, you may be able to get free legal advice from a Law Centre or Citizens' Advice Bureau. If you have a household insurance policy it is worth checking whether this gives you help with legal costs.

### **Court fees**

Unless your income is below a certain level, you will have to pay a fee when you start your case. The fee varies according to the amount of damages you are seeking. For example, as from 1 April 2003, the fee is £80 for claims worth over £500 but not more than £1,000, £120 for claims worth up to £5,000, £250 for claims worth up to £15,000 and £400 for claims over £15,000 but no more than £50,000.

At a later stage in the proceedings you will also be asked to pay:

- an allocation fee, which is currently £80 for claims worth over £1,000. You must pay this when you return your allocation questionnaire to the court (see 'Allocation' below)
- a trial fee, currently £200 for cases allocated to the fast track procedure and £400 for multi-track cases. There is no trial fee for small claims.

You will be exempt from paying court fees if you receive certain types of benefit, such as income support or income-based job seeker's allowance. You will also be exempt if your income is below a certain level and you receive working tax credit that includes an element for disability or severe disability.

The court may reduce the fees, or excuse you from paying them altogether, if you can show that paying them would cause you undue hardship.

A leaflet about fees is available from the county court and you can also get advice about fees from court staff.

### **3. How do I start a claim in the county court?**

There are county courts throughout England and Wales. You can start a claim in any of them but the court can decide to transfer the claim to a different court at a later date. It is normally best to choose the court for the area where the service provider carries on business.

You can find the address and phone number of the court in the phone book under 'courts' or at [www.courtservice.gov.uk](http://www.courtservice.gov.uk). Most court offices are open between 10am and 4pm.

To start a claim you need to fill in a claim form (Form N1). You can get this free from any county court or from [www.courtservice.gov.uk](http://www.courtservice.gov.uk). The claim form comes with detailed notes on completing each section and you should read these carefully before you start to fill it in. The county court has a series of free leaflets about making a claim. Court staff can help you to fill in the claim form but they cannot give you legal advice.

When you have filled in the claim form and particulars of the claim, make one copy for yourself; one copy for the court; and one for the service provider. Take or send the forms to the county court with the appropriate fee – see 'Court fees' above. If you are posting the forms to the court, include a stamped, self-addressed envelope.



You can ask the court to issue, but not serve, the claim form. The court will give you the claim form to serve on the service provider yourself, and you have four months from the date of issue within which to do so. It might be appropriate to do this when you think that you may be able to resolve the problem through discussion or negotiation with the service provider.

Remember, the form must be with the court six months, less one day, from the date when you were discriminated against.

### **What can I ask for?**

You can ask the court for one or more of these remedies:

- a declaration that you have been discriminated against
- money (damages) for injury to feelings
- damages for any financial loss you have suffered (if your claim is about a refusal to provide a service, this might include the extra cost of going to a different service provider)
- interest on your damages
- an order that the service provider stops discriminating against you.

In the section of the claim form headed 'Brief details of claim', you should say in a sentence or two what your claim is about and what remedy you are seeking – for example: 'I was unlawfully discriminated against by a service provider because of my disability contrary to the Disability Discrimination Act and I am seeking a declaration and damages for injury to feelings'.

## Estimate of value

Under the heading 'Value' on the front page of the claim form, you should say how much you think your claim is worth. In most cases it will not be possible to give an exact amount. You should write 'I expect to recover' followed by whichever of the following applies to your claim:

- 'not more than £5,000', or
- 'more than £5,000 but not more than £15,000', or
- 'more than £15,000'.

It is not always easy to estimate the value of a disability discrimination claim, though, in practice, most claims will be for less than £5,000. If you need advice to decide how much your claim is worth, a Citizens' Advice Bureau or Law Centre may be able to help.

Your estimate of value will help the court to decide which one of the three 'tracks' to allocate your claim to: the small claims track, the fast track and the multi-track. For more details about the three tracks and the different procedures that apply to each of them, see 'Allocation' below.

It is worth bearing in mind that each track has different rules about whether or not you can recover your legal costs from the service provider if you are successful, and whether you have to pay the service provider's costs if you lose your case. This is covered below under the headings 'What if I am successful?' and 'What if I am unsuccessful?'.

## Particulars of claim

You should give details of your claim in the section of the claim form headed 'Particulars of claim', or in a separate document which you should attach to your claim form.

In either case, include the following details:

- the nature of your disability
- step-by-step details of what happened to you, and why it is discriminatory (in a case of less favourable treatment)
- where the claim relates to a failure to make a reasonable adjustment, the duty which the service provider is in breach of (eg duty to make changes to physical features); how they are in breach (eg there are stairs only, and no ramp); and how that breach makes it impossible or unreasonably difficult for you to use the service
- details of any complaints made by you and how the service provider responded
- details of how the service provider's behaviour affected you.

This last point is important because money for injury to feelings is often the main element of the damages award in goods and services cases. If, for example, you were humiliated in public by the service provider's behaviour, or if you felt upset, anxious or depressed because of the way you were treated, you should say so in your particulars of claim.

If you set out your particulars of claim in a separate document, head it 'Particulars of claim'. You should include the name of the county court and your name and the service

provider's name in the heading. Use numbered paragraphs and, if possible, type the document – otherwise write clearly in black ink.

At the end of the particulars of claim you must include the following statement: 'I believe that the facts stated in these particulars of claim are true'. This is known as a statement of truth and it is important that you write your signature immediately under it.

If you have particular correspondence needs – for example, you require information in large print, then you will need to let the court know of this at the outset. You can send a covering letter with your claim form, to notify them of your requirements.

#### 4. What happens after I file my claim?

The court will stamp your claim form with the date of receipt, known as the 'issue date', and will give your claim a number. You should quote this number whenever you contact the court about your case.

The court will send a copy of the form to the service provider, known as the **defendant**. You will be known as the **claimant** during the case. The court will send or give you a notice of issue (Form N205B in cases where the claim is for an unspecified amount – which it will be if you are asking for money for injury to feelings), which will show the date by which the service provider should reply to your claim.

The service provider must reply within 14 days from the date when they were 'served with' (received) the claim form. The service provider must reply by filing an acknowledgement of service (Form N9) or a defence with the court. If the service

provider files an acknowledgement of service without a defence, it must then file a defence within 28 days of service of the claim form.

The court will send you notice that an acknowledgement of service has been filed. When the service provider files a defence, the court will send you a copy of the defence and an allocation questionnaire for you to complete (see 'Allocation', below).

If the service provider does not reply to your claim within the time limit, you can apply for the case to be decided in your favour. You should do this as soon as possible after the 14 days have passed.

Use the bottom half of Form N205B to ask the court to make an order that the service provider is liable (responsible) for your claim. The court will decide what amount the service provider should pay. It may be necessary to have a court hearing before a final decision is made.

If the service provider admits that it has discriminated against you, the court will send you a copy of the admission form and a notice of admission (Form N226). You should complete Form N226 and return it to the court by the date shown on the form. You must send a copy to the service provider at the same time.

### **Allocation**

If the service provider files a defence, the court will send you and the service provider an allocation questionnaire (Form N150). This will help the court to decide which is the most appropriate track for your claim. It must be returned to the court by the date shown on the form with the allocation fee (see 'Court fees' above).

The allocation questionnaire asks you a series of questions – for example, whether you want extra time to try to settle the claim, whether you want the hearing to be held at a particular court, and what witnesses you intend to call to give evidence at the hearing. It also asks you to say which track you think is the most suitable for your claim. Your view will be taken into account but this is a matter for the court to decide.

The questionnaire comes with a set of detailed notes and you should read these carefully before you start to fill it in. (Note: when filling in section C, 'Pre-action protocols', there is currently no pre-action protocol that applies to disability discrimination claims.)

After you have returned your allocation questionnaire the case will be allocated to one of three tracks – the small claims track, fast track or multi-track – depending on the amount of damages you can expect to recover and the complexity of the issues.

As a general rule, cases are allocated as follows:

- small claims track: claims worth no more than £5,000 (and personal injury claims of no more than £1,000)
- fast track: claims worth over £5,000 but not more than £15,000
- multi-track: claims worth more than £15,000.

In practice, many disability discrimination goods and services claims are allocated to the small claims track on the basis that they are likely to be worth £5,000 or less and to be relatively straightforward. But this is not always the case.

The advantages of the small claims track are that:

- Costs are usually not payable if you take a claim in the county court. Although this means that you will not get the cost of any legal representation back if you win the case, it also means that, if you lose, you will not usually have to pay any costs.
- The small claims track is usually much more informal than the other tracks.

The disadvantages are that:

- You will not generally be able to get legal aid for a claim in the small claims track.
- You will not get any costs of representation back if you win your claim.
- You may not get a full written decision (or judgment) from the court, unless you request a transcript of the decision (which you have to pay for).

If you would like to have your claim heard in the small claims track, you will need to emphasise the following:

- that the majority of DDA claims are heard in the small claims court
- that your claim does not require any expert evidence (if this is the case) and that there are few witnesses; and
- that this would be the most appropriate track for the claim to be heard in.

A claim may be allocated to one of the other two tracks if, for example, more than one claimant or defendant is involved, or if there are a lot of witnesses or the claim requires expert evidence. On the other hand, even if you are claiming more than £5,000 the court can still decide to allocate your claim to the small claims track if both you and the service provider agree.

The court will send you a notice of allocation, which will tell you which track your claim has been allocated to and what you must do to prepare your case for the hearing (known as 'directions').

## 5. What happens before the hearing?

The exact steps that you need to take before the hearing will depend on which track your claim has been allocated to. The court will normally give written directions that will tell you what needs to be done and when it must be done by.

### **Witnesses**

If you and the service provider are saying different things about what happened, and you have a witness or witnesses who can support you, it is important that they give evidence at the hearing. Your witness could be a friend or relative who was with you when you were discriminated against.

Occasionally, expert evidence will be needed but you will need the court's permission for this if your case is allocated to the small claims track. Expert evidence might be needed, for example, if you are arguing that a reasonable adjustment of installation of a ramp should have been made, and you need to prove that the cost of this would be reasonable. (An access consultant could give expert evidence as to this.)



The court will let you know in advance whether witness evidence is to be given in writing (that is, in a witness statement), orally at the hearing, or both. The court will usually send you directions telling you the date by which you and the service provider should exchange copies of your statements.

If the court asks you to provide witness statements, you should ask your witnesses to give you signed statements explaining in their own words who they are, how they know you and what they saw or heard. You will also need to prepare a statement containing your own evidence.

Witness statements (including your own) should be typed if possible, and divided into numbered paragraphs. A statement should contain the witness's full name, address and occupation, and should say whether or not the information it contains is within the witness's own knowledge.

In your witness statement, you will need to set out everything which is relevant to your case and the issues to be decided. You will need to begin by talking about your disability, to establish that you fall within the definition of a disabled person. You will then need to talk about the incident of discrimination: how it occurred and how you were affected.

At the end of the statement the witness must include the following statement: 'I believe that the facts stated in this witness statement are true.' This is known as a statement of truth and must be followed by the witness's signature.

There are specific rules for visually impaired witnesses: if you or any of your witnesses are visually impaired, you will need to contact the court for advice on the form which the statement should take.

If you are calling witnesses, it is up to you to tell them when and where the hearing will take place.

## **Small claims track**

The small claims track is designed to allow claimants to conduct their own cases without a solicitor's help in a relatively informal setting. It is generally faster, cheaper and easier to use than the fast track or the multi-track.

If your claim is allocated to this track, the court will send you a notice of allocation to the small claims track (Form N157). This will tell you the time, date and place of the hearing and how much time has been allowed for it.

The form will also give directions about the steps that you must take to prepare your case for the hearing. You may be asked to send copies of any relevant documents to the court and the service provider a certain number of days before the hearing. If you do not do this, you may lose the right to use those documents as your evidence.

Sometimes the court will hold a preliminary hearing. This may happen if special directions are needed, or if the judge considers that you have no real prospect of winning the case or that the service provider has no real prospect of successfully defending it.

## **The fast track**

If your claim is allocated to this track, the court will send you a notice of allocation to the fast track (Form N154). This notice will usually tell you what else you have to do to prepare for the trial ('directions').

Directions will vary from case to case, but it is likely that they will set out a timetable for disclosure and inspection of documents and exchange of witness statements. Disclosure

of documents usually involves listing any documents you have that support your claim, or any that either undermine or support the service provider's claim, on Form N265 (available from the court office). The service provider will be told to send you a similar list.

Once you have exchanged lists of documents with the service provider, you each have the right to make a written request to inspect the documents in the other's list. You can ask for copies of those documents but you should be prepared to pay any photocopying charges.

You do not have to show the service provider any 'privileged' documents. These are documents that were created in contemplation of your court claim, and correspondence between you and your solicitor.

Nearer the date of the hearing the court will send you a listing questionnaire (Form N170). You must complete the listing questionnaire and return it to the court with the trial fee (see 'Court fees', above). This must be done by the date given in the notice that is sent to you with the questionnaire. You should also send a copy of the completed questionnaire to the service provider.

The listing questionnaire is a pre-trial checklist. It asks you a number of questions – for example, whether you have complied with the court's directions, how many witnesses you will be calling, whether there are any dates within the trial period when you or your witnesses will not be available, and whether or not you will be represented at the trial. If you have any access needs or need any reasonable adjustments to be made, say so here.

Once the court has considered the listing questionnaire it will fix a trial date. You will be given at least 21 days' notice of the trial. The maximum amount of time allowed for a trial in the fast track is one day.

### **The multi-track**

If your claim is allocated to this track, the court will send you a notice of allocation to the multi-track (Form N155). There is no standard procedure for multi-track cases but the judge is likely to give directions about disclosure and inspection of documents and exchange of witness statements.

The judge may also decide to hold a meeting (known as a case management conference) to review the progress of the case and to decide what further steps need to be taken to prepare the case for trial.

Nearer the date of the hearing the court will send you a listing questionnaire (Form N170). The procedure for completing and returning this is the same as for the fast track.

After you have filed the listing questionnaire, the judge is likely to set a timetable for the trial and give directions about the filing of any trial bundle. The bundle is a file containing the documents that are relevant to the case.

The judge may hold a pre-trial review to decide the timetable for trial, who will give evidence and in what order, what documents should go into the trial bundle, and the amount of time allowed for the trial. You will normally be sent notice of the trial date after any pre-trial review takes place.

## 6. What happens at the hearing?

Once you receive notice of the hearing date, you should make sure that all your documents are in order and work out what you want to say at the hearing.

It is a good idea to visit a county court beforehand to get an idea of what to expect. Court staff should be able to tell you if there is a disability discrimination hearing listed and when it is due to take place. Even if there is no such claim listed, it can be useful to sit in on another case that has been allocated to the same track as yours. It is probably best to telephone the court before visiting, so that you can be certain that there is something that it would be worthwhile your seeing, and that the room in which it is being heard is accessible.

### **When you arrive at court**

You will have been given a start time for your hearing, and you should arrive at the court with plenty of time to spare. You should report to the receptionist or the court usher, who will tell you where to wait until your case is ready to be heard. The court will do their best to keep to the start time that you have been given but there may sometimes be a delay.

### **Small claims track**

If your claim has been allocated to the small claims track it will normally be held before a judge in public. This means that members of the public can attend if they wish.

If you do not have legal representation, you can take along a lay representative to speak on your behalf. This could be a friend, relative or advice worker. If they charge you a fee you will not be able to recover this from the service provider.

You and any witnesses will normally be asked to swear (take an oath on a Bible or other holy book) that the evidence you will give is true. If you prefer, you can promise to tell the truth ('affirming').

The judge will give you an opportunity to speak. The service provider (or its representative) may then ask you questions. Remember to speak clearly and slowly and direct your answers to the judge. The judge may also ask you questions.

Next, your witnesses will give evidence and will be questioned by the service provider and the judge.

The service provider and its witnesses will then give its evidence, and you (or your representative) can ask it questions. Ask questions which will support your case, and do not ask about things that are not relevant to your claim. You should take a note of the answers.

At the end of the hearing, you should be given an opportunity to make submissions about the case and the law. You will need to explain to the court :

- the legal basis for your claim (ie what section of the DDA you say the service or premises provider has breached)
- how this claim is supported by the evidence – that of you and any witnesses you have
- how the Code of Practice approaches the issue, and refer to any relevant parts of the Code
- any relevant cases on the same issue – you can get details of these from the DRC's website; and

- what you want out of the case – ie how much compensation you think that the court should award (the DRC has some useful cases on this issue).

At the end of the hearing the judge will normally give a decision and brief reasons for reaching that decision. You should take a note of what the judge says. A written copy of the decision (an order, or judgment) will be sent to you after the hearing.

### **Fast track and multi-track**

If your claim has been allocated to the fast track or the multi-track, it will normally be held in public before a judge. You can represent yourself, or a solicitor or barrister may represent you. If you are unrepresented and the hearing is in public you can take along a friend or relative, but that person will not be able to speak on your behalf.

The judge will give you and the service provider (or your representatives) an opportunity to speak and to ask each other questions. Witness statements will have been exchanged before the hearing and witnesses are likely to be called in person to give evidence. The judge may also ask questions. Make a note of what the service provider and their witnesses say.

Judgment may be given either at the end of the hearing or later. Take a note of the decision and the judge's reasons. The court will also deal with the question of costs. After the trial you will be sent an order setting out the judge's decision and any costs award.

## 7. What if I am successful?

If your case is successful, the court can give you:

- a declaration that discrimination has occurred
- compensation ('damages') for any actual financial loss and for injury to feelings incurred because of the acts of discrimination
- interest on damages
- an order ('injunction') that the defendant stop discriminating against you.

### Costs

If you win your case in the small claims track, the court will order the service provider to reimburse you for any court fees that you have paid. The service provider will usually have to pay towards the travelling and other expenses of you and your witnesses to cover attendance at the hearing.

If you have paid any legal costs, these will generally not be recoverable. An exception to this is where you and the service provider agreed that the claim should be dealt with under the small claims track, even though it was worth more than £5,000, and the court consented. In this case you can normally recover some of your legal costs from the service provider, as well as the other costs referred to above.

If you win your case in the fast track or multi-track, you can normally recover some of your court fees, travel and other expenses, and costs of legal representation from the service provider.



In the fast track, the court will assess costs at the end of the hearing. There is a fixed scale for the costs of attending the hearing. You should exchange details of your costs with the service provider before the trial and try to agree them.

In multi-track cases, costs will either be assessed at the end of the hearing or at a later date (referred to as detailed assessment). There is no fixed limit for attendance at the trial.

### **What if the service provider does not pay?**

If the court orders the service provider to pay you damages or costs, and the service provider does not pay, you should ask the court to 'enforce the judgment' – that is, help you to get your money. The court will not do this unless you ask them to. Leaflets and forms about enforcing judgment are available from the court office.

## **8. What if I am unsuccessful?**

If you are unsuccessful you should expect to have to pay some or all of the service provider's costs. The procedure for assessing costs, and the amount that you are ordered to pay, will depend which track your case was allocated to.

### **Costs – small claims track**

If you lose your case in the small claims track, you will probably be ordered to pay the travelling costs and other expenses of the service provider and their witnesses to cover their attendance at the hearing. You will not normally have to pay the service provider's legal costs (assuming there are any) unless the court thinks that you have acted unreasonably.

If your claim was worth more than £5,000 but, with consent, was dealt with in the small claims track, the court is likely to order you to pay some or all of the service provider's legal costs, as well as the service provider's expenses of attending the hearing.

### **Costs – fast track and multi-track**

If you lose your case in the fast track or the multi-track, you will normally have to pay some or all of the service provider's legal costs, as well as their (and their witnesses') expenses of attending the hearing. This could cost you thousands of pounds.

In the fast track, the court will assess costs at the end of the hearing. There is a fixed scale for the costs of attending the hearing. You should exchange details of your costs with the service provider before the trial and try to agree them.

In multi-track cases, costs will either be assessed at the end of the hearing or at a later date (referred to as detailed assessment). There is no fixed limit for attendance at the trial.

### **Appeal**

If you lose your case you may be able to appeal against the decision. Information leaflets and forms are available from the county court where your case was heard. You will need to ask for permission to appeal, and you must act quickly. You can appeal at the time of the decision but in any event, no later than 14 days from the date when you received the order setting out the decision.

You must have proper grounds for appeal. It is not enough simply to say that you think the judge made the wrong decision. You will need to show that there has been a serious irregularity in the proceedings or that the judge got the law wrong. If you are in any doubt about this you should seek legal advice.

# Useful contacts (England and Wales)

## **Disability Rights Commission**

See the back cover for our Helpline contact details.

## **British Council of Disabled People (BCODP)**

[www.bcodp.org.uk](http://www.bcodp.org.uk)

National umbrella organisation with 130 full member organisations of disabled people.

Tel: 01332 295 551 (textphone: 01332 295 581)

## **Community Legal Service**

[www.clsdirect.org.uk](http://www.clsdirect.org.uk)

The Community Legal Service is run by the Legal Services Commission. It operates a scheme for funding civil cases (formerly known as legal aid) and can help you to find a solicitor or advice centre in your area.

Tel: 0845 345 4345 (textphone: 0845 609 6677)

## **County courts**

County courts are listed under 'courts' in the telephone book. Your local county court can give you leaflets about bringing a claim. Court staff can help you to fill in forms and give you advice about procedures but they cannot give you legal advice.

Court forms are also available from:

[www.courtservice.gov.uk](http://www.courtservice.gov.uk)

### **Court Service Disability Helpline**

If you need help to bring a claim or attend a court hearing because of your disability, your first point of contact is the Customer Service Officer at the court that is dealing with your claim. If you need further information, you can contact the Court Service Disability Helpline.

Tel: 0800 358 3506, 9am to 5pm, Monday to Friday  
(textphone: 0800 358 3506)

### **DIAL UK Disabled Information and Advice Line**

[www.dialuk.org.uk](http://www.dialuk.org.uk)

DIAL UK is the national organisation for the DIAL network, giving services to disability information and advice providers. You can find your local DIAL by calling the national office.

Tel: 01302 310 123 (textphone: 01302 310 123; please use voice announcer)

### **Disability Law Service**

The Disability Law Service offers free legal advice to people with disabilities.

Tel: 020 7791 9800 (textphone: 020 7791 9801)

### **Insolvency Service**

[www.insolvency.gov.uk](http://www.insolvency.gov.uk)

The Insolvency Service can tell you whether or not a service provider is bankrupt.

Tel: 020 7291 6895

### **Law Centres**

Law Centres give free advice and assistance on employment law and other areas of law. You can find out where your nearest Law Centre is by calling the Law Centres Federation.

Tel: 020 7387 8570

**Royal Association for Disability and Rehabilitation (RADAR)**

[www.radar.org.uk](http://www.radar.org.uk)

RADAR is a national umbrella organisation with around 500 member groups. It campaigns for equal rights for disabled people and gives information and advice on disability issues.  
Tel: 020 7250 3222 (textphone: 020 7250 4119)

**Royal National Institute for the Deaf**

[www.rnid.org.uk](http://www.rnid.org.uk)

19–23 Featherstone Street, London EC1Y 8SL  
Tel: 0808 808 0123 (textphone: 0808 808 9000)

**Royal National Institute of the Blind (RNIB)**

[www.rnib.org.uk](http://www.rnib.org.uk)

105 Judd Street, London WC1H 9NE  
Helpline number: 0845 766 9999

**The Stationery Office**

The Stationery Office provides copies of the Disability Discrimination Act, the Guidance, the Code of Practice and the Civil Procedure Rules (CPR), which govern county court procedure.

Tel: 020 7873 0011

Copies of the CPR and most court forms are also available from [www.dca.gov.uk/civil/procrules\\_fin](http://www.dca.gov.uk/civil/procrules_fin)

# Glossary

**Acknowledgement of service:** Form of reply to, or confirmation of, service of process (Form N9).

**Admission:** Defendant admits that it has discriminated against you (Form N226).

**Allocation questionnaire:** Issued to all parties after a defence has been filed; it helps the court decide the most appropriate track for your claim (Form N150).

**Claim:** Proceedings issued in the county court using a claim form (Form N1).

**Claimant:** The person issuing the claim ie you.

**Community Legal Service:** State assistance for people on low incomes that pays for solicitors to advise on legal issues.

**County court:** County courts deal with DDA Part 3 claims.

**Damages:** An amount of money claimed as compensation for actual loss or injury to feelings arising from unlawful discrimination.

**DDA:** The Disability Discrimination Act 1995.

**Declaration:** Court order setting out the rights of a party in the form of a statement.

**Default judgment:** Given by the court following the failure of the defendant to comply with the requirements of a claim.

**Defendant:** The person/organisation being sued.

**Directions:** Court instructions as to what to do to prepare for the trial.

**Disclosure:** Exchange of lists of documents that support your claim and the service provider's position. Each party has the right to inspect the documents in the other's list.

**Fast track:** The path that defended claims of more than £5,000 but not more than £15,000 are allocated to.

**Fee:** Monies payable on issue of a claim and subsequent process.

**Listing questionnaire:** Used to ensure that all issues are resolved and that the parties are ready for trial. Used for fast track and multi-track claims only (Form N170). Multi-track: the path that defended claims over £15,000 are allocated to.

**Notice of issue:** Notice sent by the court to the claimant giving notification of the case number allocated to their action and details of fees paid. Confirms date of service (Form N205B).

**Particulars of claim:** Details relevant to a claim.

**Service:** Delivery by post or personal service of the claim, or other court documents.

**Small claims track:** The path that defended claims of no more than £5,000 (and personal injury claims of no more than £1,000) are allocated to.



# Appendix

## The Disability Discrimination Act 1995

Part 3, sections 19-24 of the DDA relate to goods, facilities and services, and premises. These sections are reproduced here.

### Goods, facilities and services

#### 19. Discrimination in relation to goods, facilities and services

- (1) It is unlawful for a provider of services to discriminate against a disabled person
  - (a) in refusing to provide, or deliberately not providing, to the disabled person any service which he provides, or is prepared to provide, to members of the public
  - (b) in failing to comply with any duty imposed on him by section 21 in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person to make use of any such service
  - (c) in the standard of service which he provides to the disabled person or the manner in which he provides it to him; or
  - (d) in the terms on which he provides a service to the disabled person.

- (2) For the purposes of this section and sections 20 and 21
  - (a) the provision of services includes the provision of any goods or facilities
  - (b) a person is 'a provider of services' if he is concerned with the provision, in the United Kingdom, of services to the public or to a section of the public; and
  - (c) it is irrelevant whether a service is provided on payment or without payment.
  
- (3) The following are examples of services to which this section and sections 20 and 21 apply
  - (a) access to and use of any place which members of the public are permitted to enter
  - (b) access to and use of means of communication
  - (c) access to and use of information services
  - (d) accommodation in a hotel, boarding house or other similar establishment
  - (e) facilities by way of banking or insurance or for grants, loans, credit or finance
  - (f) facilities for entertainment, recreation or refreshment
  - (g) facilities provided by employment agencies or under section 2 of the [1973 c. 50.] Employment and Training Act 1973 (these will be dealt with by amended Part 3 but cases relating to them will be heard in the employment tribunal after October 2004)
  - (h) the services of any profession or trade, or any local or other public authority.

- (4) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
- (5) Except in such circumstances as may be prescribed, this section and sections 20 and 21 do not apply to
  - (a) education which is funded, or secured, by a relevant body or provided at –
    - (i) an establishment which is funded by such a body or by a Minister of the Crown; or
    - (ii) any other establishment which is a school as defined in section 4(1) and (2) of the Education Act 1996 or section 135(1) of the Education (Scotland) Act 1980
  - (b) any service so far as it consists of the use of any means of transport; or
  - (c) such other services as may be prescribed.
- (6) In subsection (5) 'relevant body' means –
  - (a) a local education authority in England and Wales
  - (b) an education authority in Scotland
  - (c) the Funding Agency for Schools
  - (d) the Schools Funding Council for Wales
  - (e) the Further Education Funding Council for England
  - (f) the Further Education Funding Council for Wales
  - (g) the Higher Education Funding Council for Scotland
  - (h) the Scottish Higher Education Funding Council
  - (i) the Higher Education Funding Council for Wales
  - (j) the Teaching Training Agency
  - (k) a voluntary organisation; or
  - (l) a body of a prescribed kind.

## **20. Meaning of discrimination**

- (1) For the purposes of section 19, a provider of services discriminates against a disabled person if
  - (a) for a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply; and
  - (b) he cannot show that the treatment in question is justified.
  
- (2) For the purposes of section 19, a provider of services also discriminates against a disabled person if
  - (a) he fails to comply with a section 21 duty imposed on him in relation to the disabled person; and
  - (b) he cannot show that his failure to comply with that duty is justified.
  
- (3) For the purposes of this section, treatment is justified only if
  - (a) in the opinion of the provider of services, one or more of the conditions mentioned in subsection (4) are satisfied; and
  - (b) it is reasonable, in all the circumstances of the case, for him to hold that opinion.

- (4) The conditions are that
  - (a) in any case, the treatment is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person)
  - (b) in any case, the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment is reasonable in that case
  - (c) in a case falling within section 19(1)(a), the treatment is necessary because the provider of services would otherwise be unable to provide the service to members of the public
  - (d) in a case falling within section 19(1)(c) or (d), the treatment is necessary in order for the provider of services to be able to provide the service to the disabled person or to other members of the public
  - (e) in a case falling within section 19(1)(d), the difference in the terms on which the service is provided to the disabled person and those on which it is provided to other members of the public reflects the greater cost to the provider of services in providing the service to the disabled person.
- (5) Any increase in the cost of providing a service to a disabled person which results from compliance by a provider of services with a section 21 duty shall be disregarded for the purposes of subsection (4)(e).
- (6) Regulations may make provision, for purposes of this section, as to circumstances in which
  - (a) it is reasonable for a provider of services to hold the opinion mentioned in subsection (3)(a)

- (b) it is not reasonable for a provider of services to hold that opinion.
- (7) Regulations may make provision for subsection (4)(b) not to apply in prescribed circumstances where
- (a) a person is acting for a disabled person under a power of attorney
  - (b) functions conferred by or under Part VII of the [1983 c. 20.] Mental Health Act 1983 are exercisable in relation to a disabled person's property or affairs; or
  - (c) powers are exercisable in Scotland in relation to a disabled person's property or affairs in consequence of the appointment of a curator bonis, tutor or judicial factor.
- (8) Regulations may make provision, for purposes of this section, as to circumstances (other than those mentioned in subsection (4)) in which treatment is to be taken to be justified.
- (9) In subsections (3), (4) and (8) 'treatment' includes failure to comply with a section 21 duty.

## **21. Duty of providers of services to make adjustments**

- (1) Where a provider of services has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which he provides, or is prepared to provide, to other members of the public, it is his duty to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to change that practice, policy or procedure so that it no longer has that effect.

- (2) Where a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to
  - (a) remove the feature
  - (b) alter it so that it no longer has that effect
  - (c) provide a reasonable means of avoiding the feature;  
or
  - (d) provide a reasonable alternative method of making the service in question available to disabled persons.
- (3) Regulations may prescribe
  - (a) matters which are to be taken into account in determining whether any provision of a kind mentioned in subsection (2)(c) or (d) is reasonable;  
and
  - (b) categories of providers of services to whom subsection (2) does not apply.
- (4) Where an auxiliary aid or service (for example, the provision of information on audio tape or of a sign language interpreter) would
  - (a) enable disabled persons to make use of a service which a provider of services provides, or is prepared to provide, to members of the public, or
  - (b) facilitate the use by disabled persons of such a service, it is the duty of the provider of that service to

take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to provide that auxiliary aid or service.

- (5) Regulations may make provision, for the purposes of this section
  - (a) as to circumstances in which it is reasonable for a provider of services to have to take steps of a prescribed description
  - (b) as to circumstances in which it is not reasonable for a provider of services to have to take steps of a prescribed description
  - (c) as to what is to be included within the meaning of 'practice, policy or procedure'
  - (d) as to what is not to be included within the meaning of that expression
  - (e) as to things which are to be treated as physical features
  - (f) as to things which are not to be treated as such features
  - (g) as to things which are to be treated as auxiliary aids or services
  - (h) as to things which are not to be treated as auxiliary aids or services.
  
- (6) Nothing in this section requires a provider of services to take any steps which would fundamentally alter the nature of the service in question or the nature of his trade, profession or business.



- (7) Nothing in this section requires a provider of services to take any steps which would cause him to incur expenditure exceeding the prescribed maximum.
- (8) Regulations under subsection (7) may provide for the prescribed maximum to be calculated by reference to
  - (a) aggregate amounts of expenditure incurred in relation to different cases
  - (b) prescribed periods
  - (c) services of a prescribed description
  - (d) premises of a prescribed description; or
  - (e) such other criteria as may be prescribed.
- (9) Regulations may provide, for the purposes of subsection (7), for expenditure incurred by one provider of services to be treated as incurred by another.
- (10) This section imposes duties only for the purpose of determining whether a provider of services has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

## **Premises**

### **22. Discrimination in relation to premises**

- (1) It is unlawful for a person with power to dispose of any premises to discriminate against a disabled person
  - (a) in the terms on which he offers to dispose of those premises to the disabled person

- (b) by refusing to dispose of those premises to the disabled person; or
  - (c) in his treatment of the disabled person in relation to any list of persons in need of premises of that description.
- (2) Subsection (1) does not apply to a person who owns an estate or interest in the premises and wholly occupies them unless, for the purpose of disposing of the premises, he
  - (a) uses the services of an estate agent; or
  - (b) publishes an advertisement or causes an advertisement to be published.
- (3) It is unlawful for a person managing any premises to discriminate against a disabled person occupying those premises
  - (a) in the way he permits the disabled person to make use of any benefits or facilities
  - (b) by refusing or deliberately omitting to permit the disabled person to make use of any benefits or facilities; or
  - (c) by evicting the disabled person, or subjecting him to any other detriment.
- (4) It is unlawful for any person whose licence or consent is required for the disposal of any premises comprised in, or (in Scotland) the subject of, a tenancy to discriminate against a disabled person by withholding his licence or consent for the disposal of the premises to the disabled person.

(5) Subsection (4) applies to tenancies created before as well as after the passing of this Act.

(6) In this section

‘advertisement’ includes every form of advertisement or notice, whether to the public or not

‘dispose’, in relation to premises, includes granting a right to occupy the premises, and, in relation to premises comprised in, or (in Scotland) the subject of, a tenancy, includes

(a) assigning the tenancy; and

(b) sub-letting or parting with possession of the premises or any part of the premises; and

‘disposal’ shall be construed accordingly

‘estate agent’ means a person who, by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises; and

‘tenancy’ means a tenancy created

(c) by a lease or sub-lease

(d) by an agreement for a lease or sub-lease

(e) by a tenancy agreement; or

(f) in pursuance of any enactment.

(7) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.

- (8) This section applies only in relation to premises in the United Kingdom.

### **23. Exemption for small dwellings**

- (1) Where the conditions mentioned in subsection (2) are satisfied, subsection (1), (3) or (as the case may be) (4) of section 22 does not apply.
- (2) The conditions are that
- (a) the relevant occupier resides, and intends to continue to reside, on the premises
  - (b) the relevant occupier shares accommodation on the premises with persons who reside on the premises and are not members of his household
  - (c) the shared accommodation is not storage accommodation or a means of access; and
  - (d) the premises are small premises.
- (3) For the purposes of this section, premises are 'small premises' if they fall within subsection (4) or (5).
- (4) Premises fall within this subsection if
- (a) only the relevant occupier and members of his household reside in the accommodation occupied by him
  - (b) the premises comprise, in addition to the accommodation occupied by the relevant occupier, residential accommodation for at least one other household

- (c) the residential accommodation for each other household is let, or available for letting, on a separate tenancy or similar agreement; and
  - (d) there are not normally more than two such other households.
- (5) Premises fall within this subsection if there is not normally residential accommodation on the premises for more than six persons in addition to the relevant occupier and any members of his household.
- (6) For the purposes of this section 'the relevant occupier' means
  - (a) in a case falling within section 22(1), the person with power to dispose of the premises, or a near relative of his
  - (b) in a case falling within section 22(4), the person whose licence or consent is required for the disposal of the premises, or a near relative of his.
- (7) For the purposes of this section  
  
'near relative' means a person's spouse, partner, parent, child, grandparent, grandchild, or brother or sister (whether of full or half blood or by affinity); and 'partner' means the other member of a couple consisting of a man and a woman who are not married to each other but are living together as husband and wife.

## 24. Meaning of "discrimination"

- (1) For the purposes of section 22, a person ("A") discriminates against a disabled person if
  - (a) for a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply; and
  - (b) he cannot show that the treatment in question is justified.
- (2) For the purposes of this section, treatment is justified only if
  - (a) in A's opinion, one or more of the conditions mentioned in subsection (3) are satisfied; and
  - (b) it is reasonable, in all the circumstances of the case, for him to hold that opinion.
- (3) The conditions are that
  - (a) in any case, the treatment is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person)
  - (b) in any case, the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment is reasonable in that case
  - (c) in a case falling within section 22(3)(a), the treatment is necessary in order for the disabled person or the occupiers of other premises forming part of the building to make use of the benefit or facility

- (d) in a case falling within section 22(3)(b), the treatment is necessary in order for the occupiers of other premises forming part of the building to make use of the benefit or facility.
- (4) Regulations may make provision, for purposes of this section, as to circumstances in which
  - (a) it is reasonable for a person to hold the opinion mentioned in subsection 2(a)
  - (b) it is not reasonable for a person to hold that opinion.
- (5) Regulations may make provision, for purposes of this section, as to circumstances (other than those mentioned in subsection (3)) in which treatment is to be taken to be justified.

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