

Employment

The Disability Discrimination Act 1995 –
Employment Provisions

The Questions Procedure

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The Questions Procedure DL56

The DDA – 1995

The Disability Discrimination Act ('the Act') introduces measures aimed at ending the discrimination which many disabled people face.

The Act gives disabled people rights in the areas of:

- employment and occupation
- access to goods, facilities and services; the management, buying, or renting of land or property; and
- education

Important changes to the Act came into force on 1 October 2004 and this booklet reflects the legal position **after 1 October 2004.**

Information on the Act is available from:

DRC Helpline
FREEPOST MID 02164
Stratford upon Avon
CV37 9BR

Telephone: 08457 622 633

Textphone: 08457 622 644

Fax: 08457 778 878

Web: www.drc-gb.org

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A complainant should prepare two copies of this booklet, one to send to the respondent and the other to keep.

The complainant and the respondent should read Part 1 of the guidance (as well as the appendix if unfamiliar with the Act’s provisions). Before completing the questionnaire the complainant should also read Part 2 of the guidance and before completing the reply form the respondent should read Part 3.

Guidance on the questions procedure

Part 1 – Introduction

1. The purpose of this guidance is to explain the questions procedure (sometimes known as the 'questionnaire procedure') under section 56 of the Disability Discrimination Act 1995. The prescribed forms, time limits for serving questions and manner of service of questions and replies under section 56 are specified in the Disability Discrimination (Questions and Replies) Order 2004 (SI 2004 No. 1168). The procedure is intended to help a person (referred to in this guidance as the **complainant**) who thinks he or she has been discriminated against by another (the **respondent**) under the employment and occupation provisions of the Act (Part 2 of the Act) or in relation to the provision of employment services (Part 3 of the Act) to obtain information from that person about the treatment in question in order to:
 - decide whether or not to bring legal proceedings before an employment tribunal; and
 - if proceedings are brought, to present his or her complaint in the most effective way.

A questionnaire has been devised which the complainant can send to the respondent and there is also a matching reply form for use by the respondent. Both forms are included in this booklet which can be obtained from job centres and Citizens Advice Bureaux and the Disability Rights Commission's Helpline (see

inside front cover). The questionnaire and the reply form have been designed to assist the complainant and respondent to identify information which is relevant to the complaint.

2. This guidance is intended to assist both the complainant and the respondent. Guidance for the complainant on the preparation of the questionnaire is set out in Part 2, and guidance for the respondent on the use of the reply form is set out in Part 3. The main provisions of the Disability Discrimination Act relating to employment and occupation are referred to in the appendix to this guidance and it may help to read this appendix now if you are unfamiliar with the Act. If you do not do so, you may not understand some of the terms used in the guidance. A variety of further information about the Act (including audio cassette and Braille formats) is available free of charge from the Disability Rights Commission's Helpline (see inside front cover).

The Disability Rights Commission (DRC) has produced a statutory Code of Practice – the Disability Discrimination Act Code of Practice on Employment and Occupation – which gives guidance on the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability (ISBN 0-11-703419-3). The Code is admissible in evidence in any proceedings under the Act before an employment tribunal or court. It may be obtained from The Stationery Office (formerly HMSO) and good booksellers or downloaded from the DRC's website.

Braille and audio cassette versions

3. Versions of this booklet in audio cassette and Braille formats are available from the DRC's Helpline – see before Contents section.
4. Although some complainants may wish to obtain these versions of the booklet for ease of understanding, it is advisable to use the standard printed questionnaire (getting someone else to complete it on their behalf as necessary) to serve on the respondent. This is because, if the material is relevant to an employment tribunal complaint, the tribunal is likely to insist that it is submitted by the complainant in a standard written form. In addition, the use of an alternative format without also providing a completed standard printed questionnaire might (depending on the circumstances) provide the respondent with a reasonable excuse for not responding (see paragraph 7). This could work to the detriment of the complainant.
5. A complainant might normally use an alternative format in the course of his or her relationship with the respondent (eg as an employee/employer). If so, the complainant might choose to use that format for the questionnaire but, bearing in mind the points in the previous paragraph, it would be advisable to obtain the agreement of the respondent to the use of the alternative format.

How the questions procedure can benefit both parties

6. The procedure can benefit both the complainant and the respondent in the following ways:
 - If the respondent's answers satisfy the complainant that there was no unlawful discrimination, there will be no need for legal proceedings.

- Even if the respondent's answers do not satisfy the complainant, they should help to identify what is agreed and what is in dispute between the parties. For example, the answers should reveal whether the parties disagree on the facts of the case or, if they agree on the facts, whether they disagree on how the Act applies. In some cases, this may lead to a settlement of a grievance, again making legal proceedings unnecessary.
- If it turns out that the complainant institutes proceedings against the respondent, the proceedings should be that much simpler because the matters in dispute will have been identified in advance.

What happens if the respondent does not reply or replies evasively

7. The respondent cannot be compelled to reply to the complainant's questions. However, if the respondent deliberately, and without reasonable excuse, does not reply within eight weeks, or replies in an evasive or ambiguous way, his or her position may be adversely affected should the complainant bring proceedings. The respondent's attention is drawn to these possible consequences in the note at the end of the questionnaire.

Period within which a questionnaire must be served on the respondent

8. A question in a questionnaire and any reply by a respondent is admissible in employment tribunal proceedings if the complainant's questionnaire is served on the respondent either:
 - If a complaint about the treatment concerned has not yet been made to an employment tribunal, within three

months after the treatment in question (unless the time limit for making a complaint to an employment tribunal has been extended under the new dispute resolution procedure – in which case, the period for serving the questionnaire will be extended by the same period); or

- if a complaint has already been made to a tribunal, within 28 days of the complaint being received by the tribunal.
9. However, where the complainant has made a complaint to a tribunal and the period of 28 days has expired, a questionnaire may still be served provided the leave of the tribunal is obtained. This may be done by sending to the Secretary of the Tribunal a written application, which must state the names of the complainant and the respondent and set out the grounds of the application. If the tribunal gives leave, it will specify the period for serving the questionnaire. However, every effort should be made to serve the questionnaire within the period of 28 days as the leave of the tribunal to serve the questionnaire after the expiry of that period will not necessarily be obtained.

Part 2 – Guidance for the complainant

Notes on preparing the questionnaire

10. Before filling in the questionnaire, you are advised to prepare what you want to say in advance. If you have insufficient room on the questionnaire for what you want to say, you should continue on an additional piece of paper, which should be attached to the questionnaire and sent with it to the respondent.

Paragraph 2 of the questionnaire

11. You should give, in the space provided in paragraph 2, as much relevant factual information as you can about your complaint. There are a number of different kinds of complaint under the Act. These are:

- Direct discrimination (less favourable treatment on the grounds of a person's disability compared to the way a relevant comparator is, or would be, treated).
- Failure to make reasonable adjustments where there is a duty to do so.
- 'Disability-related discrimination' (unjustifiable less favourable treatment for a reason related to disability).
- Victimisation (less favourable treatment of any person, whether disabled or not, because they have carried out an act that is protected, such as bringing a claim under the Act, or giving evidence in a claim brought under the Act).
- Harassment.

You should give details of the treatment, or the failure to make an adjustment, that you think may have been unlawful under the Act and about the circumstances leading up to that treatment or failure. You should also, if possible and if relevant, give the date, place and approximate time of the treatment or failure to make an adjustment that you are complaining about. You should bear in mind that in paragraph 4 of the questionnaire you will be asking whether the respondent agrees with what you say in paragraph 2.

Paragraph 3 of the questionnaire

12. In paragraph 3 you are telling the respondent that you think the treatment or failure to make an adjustment you have described in paragraph 2 may have been unlawful discrimination or harassment by the respondent against you. It will help to identify whether there are any legal issues between you and the respondent if you explain in the space provided why you think the treatment or failure may have been unlawful discrimination. However, you do not have to complete paragraph 3. If you do not wish to do so or you are unable to do so, you should delete the word 'because'. If you wish to complete the paragraph but feel you need more information about the Disability Discrimination Act before doing so, you should look at the appendix to this guidance or seek further information as outlined in paragraph 2 of this guidance.
13. Most complaints are likely to be by employees or prospective employees. However, other categories of people can also bring claims under the Act in respect of the work they do, or their occupation. This includes contract workers (people who carry out work personally for someone else), office holders (such as company directors or judges, but not holders of political office

such as local councillors or MPs), police officers, partners in firms, barristers and advocates and people carrying out practical work experience. If you are an employee, or fall within one of the other categories mentioned here and you decide to complete paragraph 3, you may feel it useful to indicate:

- **What kind of discrimination you think has occurred.** This could be direct discrimination; failure to make a reasonable adjustment; 'disability-related discrimination'; or victimisation; and/or whether you are alleging harassment.
- **Which provision(s) of the Act you think may make unlawful the kind of conduct you say has occurred.** (For further information about the provisions of the Act which relate to these kinds of discrimination see the appendix to this guidance.)

In addition, the Act has provisions about trade organisations, qualifications bodies, occupational pension providers, providers of insurance services, and providers of employment services. The questionnaire can be sent to these bodies too.

14. If you wish to make a complaint of discrimination against a trade organisation you may wish to say whether the complaint is about joining the trade organisation or about being able to access any benefits associated with membership, or about your membership being terminated. You may also wish to indicate how you think discrimination or harassment has occurred. Section 13 of the Act is the relevant section dealing with complaints about trade organisations. If you wish to make a complaint about a qualifications body you may wish to say whether it is about the arrangements made for deciding whether to confer a qualification, the terms on which a qualification is conferred or the fact that you have been

refused a qualification or an existing qualification has been withdrawn. You may also wish to indicate how you think discrimination or harassment has occurred. Section 14 of the Act is the relevant section dealing with complaints about qualifications bodies. The DRC has produced a Code of Practice containing information about the provisions of the Act relating to trade organisations and qualifications bodies – the Disability Discrimination Act Code of Practice on Trade Organisations and Qualifications Bodies (ISBN 0-11-703418-5). The Code is admissible in evidence in any proceedings under the Act before an employment tribunal or court. It may be obtained from The Stationery Office (formerly HMSO) and good booksellers or downloaded from the DRC's website.

15. If you wish to make a complaint about a pension provider, or a provider of insurance services who has an arrangement with your employer to provide or offer pensions or insurance services to their employees, you may wish to describe the service provided and the way in which you feel discrimination or harassment has occurred. Complaints specifically against a provider of pensions or insurance services arranged via your employer should be made direct to the pensions or insurance company and not to your employer. Sections 4G to 4K and 18 of the Act are the relevant sections relating to pensions and insurance. Chapter 10 of the DRC's Code of Practice on Employment and Occupation contains guidance about these provisions.
16. If you wish to make a complaint about discrimination by a provider of employment services (such as vocational guidance or training services, or services designed to assist people to find jobs), you need to describe the service provided and the way you feel discrimination or harassment has occurred. Chapter 11

of the DRC's Code of Practice on Employment and Occupation contains guidance about these provisions.

Paragraph 6 of the questionnaire

17. You should insert here any other questions which you think may help you to obtain the relevant information. For example, if you think you were discriminated against by having been refused a job, you may want to know what the qualifications were of the person who did get the job and why that person got the job.

Signature

18. The questionnaire must be signed and dated. If it is to be signed on behalf of (rather than by) the complainant, the person signing should:

- describe himself or herself (eg 'solicitor acting for (name of complainant)' or 'signing on behalf of (name of complainant) who has asked me to complete the form on his/her behalf'); and
- give his/her business (or if appropriate, home) address.

What documents to serve on the respondent

19. You should send the person to be questioned the whole of this booklet (ie the guidance, the questionnaire and the reply form), with the questionnaire completed by you. Some disabled people may need to arrange for someone to complete a written version of the form on their behalf. Refer to paragraphs 3–5 of this guidance about use of alternative formats. You are strongly advised to retain, and keep in a safe place, a copy of the completed questionnaire. You will probably also find it useful to

retain a spare copy of the uncompleted booklet as well as the audio or Braille format of these if you obtained one.

How to serve the documents

20. You can either deliver the documents in person or send them by post. If you decide to send them by post you are advised to use the recorded delivery service, so that, if necessary, you can produce evidence that they were delivered.

Where to send the documents

21. You can send the documents to the respondent at his or her usual or last known residence or place of business. If you know that he or she is acting through someone else (eg a solicitor) you should send them to the appropriate address. If you wish to question a limited company or other corporate body, a trade organisation or a provider of insurance services, you should deliver or send the documents to the secretary or clerk at the registered or principal office of the organisation. You should be able to find out where its registered or principal office is by enquiring at a public library. If you are unable to do so, however, you will have to send the documents to the place where you think it is most likely they will reach the secretary or clerk (eg at, or c/o, the company's local office). It is your responsibility, however, to see that the secretary or clerk receives the documents.

Use of the questions and replies in employment tribunal proceedings

22. If you decide to make (or have already made) a complaint to an employment tribunal about the treatment concerned and if you intend to use your questions and the replies, if any, as evidence in the proceedings, you are advised to send copies of your questions and any replies to the Secretary of the Tribunals before the date of the hearing. This should be done as soon as the documents are available; if they are available at the time you submit your complaint to a tribunal, you should send the copies with your complaint to the Secretary of the Tribunals.

Does sending this document amount to lodging a grievance under statutory procedures?

23. There are statutory grievance and disciplinary procedures which mean that employees (but not the other categories of people described in paragraph 13) usually have to send a written grievance to their employer before starting tribunal proceedings. Sending a questionnaire does not amount to lodging a grievance under the statutory procedure, however if you send a questionnaire with a covering letter specifying that you are lodging a grievance based on the matters described in paragraph 2 of the questionnaire, this should comply. Further information about how the statutory procedures work and whether they apply to you is available from ACAS: www.acas-org.uk and from the dti's website: www.dti.gov.uk/resolvingdisputes.htm

Part 3 – Guidance for the respondent

Notes on completing the reply form

24. Before completing the reply form, you are advised to prepare what you want to say in advance. If you have insufficient room on the reply form for what you want to say, you should continue on an additional piece of paper, which should be attached to the reply form sent to the complainant.

Paragraph 2 of the reply form

25. Here, you are answering the questions in paragraph 4 of the questionnaire. If you agree that the complainant's statement in paragraph 2 of the questionnaire is an accurate description of what happened, you should delete the second sentence.

26. If you disagree in any way that the statement is an accurate description of what happened, you should delete the first sentence and explain in the space provided in what respects you disagree, or give your version of what happened, or both.

Paragraph 3 of the reply form

27. Here you are answering the questions in paragraph 5 of the questionnaire. If, in answer to paragraph 4 of the questionnaire, you have agreed with the complainant's description of his or her treatment, you will be answering paragraph 5 on the basis of the facts in that

description. If, however, you have disagreed with that description, you should answer paragraph 5 on the basis of your version of the facts.

28. To answer paragraph 5, you are advised to look at the appendix to this guidance and any other relevant information on the provisions of the Act relating to employment and occupation or the definition of disability that you may wish to obtain. Further information is available free of charge from the address or telephone numbers given before the Contents section. Paragraph 2 of this guidance describes how to obtain a copy of the DRC's Code of Practice on Employment and Occupation. If you are responding on behalf of a trade organisation or qualifications body, paragraph 14 of this guidance describes how to obtain a copy of the DRC's Code of Practice on Trade Organisations and Qualifications Bodies.

29. You may need to know:

- Who is covered by the Act – see paragraph 1 of the appendix.
- How the Act defines discrimination – see paragraphs 2 and 3 of the appendix.
- How the Act defines harassment – see paragraph 4 of the appendix.
- How you can determine whether your treatment of the complainant might be justified – see paragraph 5 of the appendix.
- In what situations the Act makes discrimination unlawful – see paragraph 6 of the appendix.
- What is meant by the term 'reasonable adjustment' – see paragraphs 7–9 of the appendix.
- What to do if a lease prohibits a particular adjustment – see paragraphs 10–11 of the appendix.
- How the Act covers discrimination in relation to

pensions or group insurance – see paragraphs 12–14 of the appendix.

- How the Act covers discrimination against contract workers – see paragraphs 15–16 of the appendix.
- How the Act covers discrimination in relation to other occupations – see paragraph 17 of the appendix.
- How the Act covers discrimination by trade organisations and qualifications bodies – see paragraph 18 of the appendix.
- How the Act covers discrimination in relation to providers of employment services – see paragraph 19 of the appendix.
- Who does not have duties under the employment provisions of the Act – see paragraph 20 of the appendix.

30. In responding to the questions in paragraph 5 of the questionnaire, you should note that the first statement of paragraph 3 of the reply form requires you to accept or dispute that your conduct amounted to unlawful treatment or a failure to make a reasonable adjustment. You should delete 'accept' if you do not accept that your conduct was unlawful or 'dispute' if you do accept that your conduct was unlawful. If you are disputing that you did anything unlawful, you should decide whether or not you wish to give reasons and complete or delete the second statement in paragraph 3. This might include reasons why provisions of the Act did not apply in the particular circumstances. If you consider that what you did was justified under the Act, then you should say so under the third statement in paragraph 3. You should note that the Act only provides for the possibility of justification in limited circumstances. It is not possible to justify direct discrimination, failure to make a reasonable adjustment, victimisation or harassment.

Paragraph 4 of the reply form

31. Here you are answering any questions in paragraph 6 of the questionnaire, which the complainant may have asked in order to obtain information he or she considers relevant.

Signature

32. The reply form should be signed and dated. If it is to be signed on behalf of (rather than by) the respondent, the person signing should:

- describe himself or herself (eg 'solicitor acting for (name of respondent)' or 'personnel manager of (name of firm)'); and
- give his or her business (or, if appropriate, home) address.

Serving the reply form on the complainant

33. If you wish to reply to the questionnaire you are strongly advised to do so without delay. If the complainant has provided an audio cassette or Braille format of the questionnaire, it is a matter for you whether you provide your reply in a similar format. However, you may wish to do so if, for example, that is the format which the individual has normally used in the course of involvement with you. You are strongly advised to retain, and keep in a safe place, the booklet sent to you with the completed questionnaire in it, and a copy of your reply.

34. You can serve the reply either by delivering it in person to the complainant or by sending it by post. If you decide to send by post you are advised to use the

recorded delivery service, so that, if necessary, you can produce evidence that it was delivered.

35. You should send the reply form to the address indicated in paragraph 7 of the complainant's questionnaire.

The Disability Discrimination Act 1995 s56(2)(a)

Complainant's questionnaire

To

{Name of person to be questioned (the respondent).}

of

{Address}

1. I

{Name of complainant}

of

{Address}

consider that you may have discriminated against me
contrary to the Disability Discrimination Act 1995 ('the Act')
by:

- (a) (i) directly discriminating against me, or
- (ii) otherwise treating me less favourably for a reason relating to my disability in circumstances in which that treatment cannot be justified

{This is referred to in the guidance to this questionnaire, and the relevant codes of practice as 'disability-related discrimination'.}

- (b) failing to comply with a duty to make a reasonable adjustment which applied to you in my case
- (c) victimising me
and/or

I consider that you may have subjected me to harassment contrary to the Act.

2. {Give details including a factual description of the treatment received, the effect of the treatment received (if the complaint relates to harassment), or the failure complained of. Describe any relevant circumstances leading up to this and include any relevant dates or approximate dates (see paragraph 11 of this guidance).}

3. I consider this treatment or failure on your part may have been unlawful because

{Complete if you wish to give reasons, otherwise delete the word 'because' (see paragraphs 12–16 of the guidance).}

4. Do you agree that the statement in paragraph 2 above is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

{This is the first of your questions to the respondent. You are advised not to alter it.}

5. Do you accept that your treatment of me or any failure complained of was unlawful?
If not, why not?

{This is the second of your questions to the respondent. You are advised not to alter it.}

6. {Any other questions you wish to ask (see paragraph 17 of the guidance).}

7. Please send your reply to *[the above address]*[the following address]

{Delete as appropriate. If you delete the first alternative, insert the address to which you want the reply to be sent.}

Signature of complainant

Date

{See paragraph 18 of the guidance.}

*delete as appropriate

Notes

(1) Under 56(3) of the Act (as amended by the Disability Discrimination Act 1995 (amendment) Regulations 2003), this questionnaire and any reply are admissible in evidence in employment tribunal proceedings brought under Part 2 of the Act or – in cases concerning employment services – under Part 3.

(2) Section 56(3)(b) allows a tribunal to draw any inference it considers is just and equitable from:

- a failure, without reasonable excuse, to reply to the questions within eight weeks, or
- an evasive or equivocal reply.

This could include an inference that the person questioned has discriminated against the complainant or subjected the complainant to harassment in a way which is unlawful under Part 2 of the Act or under Part 3 if the case concerns employment services.

The Disability Discrimination Act 1995 s56(2)(b)

Respondent's reply

To

{Name of complainant}

of

{Address}

1. I

{Name of respondent}

of

{Address}

hereby acknowledge receipt of the questionnaire signed by
you

and dated

which was served on me on (date)

{Complete as appropriate}

2. * I agree that the statement in paragraph 2 of the questionnaire is an accurate description of what happened.

* I disagree with the statement in paragraph 2 of the questionnaire in that:

{If you agree that the statement in paragraph 2 of the questionnaire is accurate, delete the second sentence. If you disagree, delete the first sentence and complete the second one saying which parts of the statement in paragraph 2 of the questionnaire you disagree with and why (see paragraphs 25–26 of the guidance).}

3. * I accept/*I dispute

that my treatment of you or any failure on my part to comply with a duty to make reasonable adjustments was unlawful.

{Delete as appropriate (see paragraphs 27–30 of the guidance).}

* My reasons for disputing this are:

{Include any reasons which in your view explain or justify your treatment of the complainant or explain any failure on your part to comply with a duty to make a reasonable adjustment.}

4. {Replies to questions in paragraph 6 of the questionnaire (see paragraph 31 of the guidance).}

5. *I have deleted (in whole or in part) the paragraph(s) numbered _____ above, since I am unable/unwilling to reply to the relevant questions in the correspondingly numbered paragraph(s) of the questionnaire for the following reasons:

{Delete the whole of this sentence if you have answered all the questions in the questionnaire. If you have not answered all the questions delete 'unable' or 'unwilling' as appropriate and give your reasons for not answering.}

Signature of respondent _____

Date _____

{See paragraph 32 of the guidance.}

*delete as appropriate

Appendix

Notes on the scope of the Disability Discrimination Act 1995

Who is covered by the Act?

1. The Act covers disabled people and those who have had a disability. People who are not, and have not been, disabled can be covered by the Act only in relation to complaints of victimisation. A disabled person under the Act is anyone with “a physical or mental impairment which has a substantial and long-term adverse effect upon his ability to carry out normal day-to-day activities”. If there is doubt about whether a complainant is covered by this definition, further information about the definition (including audio cassette and Braille formats) is available free of charge from DRC’s Helpline (see before Contents section for details). There is also statutory Guidance on matters to be taken into account in determining questions relating to the definition of disability (ISBN 0-11-270955-9). This can be obtained from The Stationery Office (formerly HMSO) and good booksellers.

What is discrimination under the Act?

2. From 1 October 2004 Part 2 of the Act makes it unlawful for all employers, regardless of their size, to discriminate against current or prospective employees (however, the exemption in relation to serving members of the Armed Forces will continue to apply).

In addition to covering contract workers and trade organisations, Part 2 of the Act also applies to police officers, office holders, partners in firms, barristers and advocates, qualifications bodies and people applying for or engaged in practical work experience. Part 2, as amended, also provides protection after the employment or other relevant relationship has ceased. The following types of discrimination will be unlawful:

- direct discrimination (this occurs when, on the grounds of a disabled person's disability, an employer treats that person less favourably than they treat or would treat a person not having that particular disability whose relevant circumstances are the same or not materially different from those of the disabled person)
- failing to comply with a duty to make reasonable adjustments
- 'disability-related discrimination' (this occurs when, for a reason related to a disabled person's disability, an employer treats a disabled person less favourably than someone to whom that reason does not apply, and the employer cannot show that this treatment is justified), or
- victimisation (see paragraph 3 below).

The Act also makes it unlawful to harass a disabled person (see paragraph 4 below).

3. Victimisation is a special form of discrimination covered by the Act. The Act makes it unlawful for a person to be treated less favourably than others in the same circumstances because he or she has:
 - brought proceedings under the Act, or given evidence or information in connection with proceedings under the Act (whether or not proceedings are later withdrawn)
 - done anything else under the Act, or

- alleged someone has contravened the Act (whether or not the allegation is later dropped); or because he or she is believed or suspected to have done or intended to do any of these things.

What is harassment?

4. Harassment occurs when, for a reason which relates to a person's disability, another person engages in unwanted conduct which has the purpose or effect of:
 - violating the disabled person's dignity, or
 - creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

If the conduct in question was engaged in with the intention that it should have either of these effects, then it amounts to harassment. In the absence of such intention, the conduct will amount to harassment if it can be reasonably considered as having either of these effects. An employer can be held legally responsible for harassment or discriminatory acts carried out by their employees or anyone who is acting as an agent of the employer.

When can an employer justify less favourable treatment?

5. Direct discrimination cannot be justified. Failing to comply with the duty to make reasonable adjustments cannot be justified either. Nor can victimisation or harassment. Less favourable treatment for a reason related to disability can be justified in certain circumstances. Such treatment can only be justified if the reason for it is both material to the circumstances of the particular case and substantial. An employer cannot justify less favourable treatment if a reasonable adjustment would remove, or make less substantial, the reason for that treatment.

Is discrimination unlawful in all areas of employment?

6. Yes. Employers should not discriminate in any area of employment, including recruitment; terms and conditions of service; arrangements made for employees who become disabled (or who have a disability which worsens); opportunities for promotion, transfer, training or receiving of any other benefits, or refusal of such opportunities; pensions; dismissal or any other detriment. Events which occur after the employment relationship has ended, but which are connected to it, may also be covered (the same applies in respect of the other categories of people protected by the employment and occupation provisions of the Act, for example contract workers).

What is the duty of reasonable adjustment?

7. An employer may have to make a reasonable adjustment if a provision, criterion or practice applied by or on behalf of the employer or any physical feature of the premises occupied by the employer substantially disadvantage a disabled person compared with non-disabled people. An employer has to take such steps as it is reasonable for him or her to have to take in all the circumstances to prevent the provision, criterion or practice, or physical feature from having that effect.

An employer is not under an obligation to make an adjustment if he or she does not know, and could not reasonably be expected to know:

- that the disabled person concerned is or may be an applicant for the work in question; or
- that the person has a disability which is likely to place the person at a substantial disadvantage.

What is a reasonable adjustment?

8. The Act gives a number of examples of 'steps' which employers may have to take, if it is reasonable for them to have to do so in all the circumstances of the case, to prevent a provision, criterion or practice or physical feature of their premises placing a disabled person at a substantial disadvantage in comparison with people who are not disabled. These are:

- making adjustments to premises
- allocating some of the disabled person's duties to another person
- transferring the person to fill an existing vacancy
- altering the person's hours of work or training
- assigning the person to a different place of work or training
- allowing the person to be absent during working or training hours for rehabilitation, assessment or treatment
- giving the person, or arranging for him or her to be given, training or mentoring
- acquiring or modifying equipment
- modifying instructions or reference manuals
- modifying procedures for testing or assessment
- providing a reader or interpreter
- providing supervision or other support.

Steps other than those listed, or a combination of steps, will sometimes have to be taken.

When is it reasonable for an employer to have to make an adjustment?

9. The Act lists a number of factors which may, in

particular, have a bearing on whether it will be reasonable for the employer to have to make a particular adjustment. These are:

- the effectiveness of the particular adjustment in preventing the disadvantage
- the practicability of the adjustment
- the financial and other costs of the adjustment and the extent of any disruption caused
- the extent of the employer's financial and other resources
- the availability to the employer of financial or other assistance to help make an adjustment
- the nature of the employer's activities and the size of his undertaking
- where the step would be taken in relation to a private household, the extent to which taking it would disrupt the household or disturb any person living there.

There may be other relevant factors than those listed in the Act.

What if a lease prohibits a particular adjustment?

10. If an employer rents premises and proposes as a reasonable adjustment to make an alteration to those premises which the lease states must not be made, or can only be made subject to certain conditions or to conditions imposed by the landlord, the employer should write to the landlord explaining that he or she proposes to make the alteration in order to comply with a duty of reasonable adjustment and is asking for the landlord's permission for the alteration. The employer does not then have to make the alteration until the landlord has given permission.

11. The landlord must reply to the employer within 21 days or such longer time as is reasonable. The landlord cannot unreasonably withhold his or her consent for the alteration but can attach reasonable conditions if he or she gives consent.

Discrimination in relation to occupational pension schemes and group insurance schemes for employees

12. Employers must not discriminate in the way they provide pension schemes to disabled people. To the extent that an employer has control over matters relating to pension benefits, the usual principles about discrimination will apply. For example, less favourable treatment of a disabled person may amount to direct discrimination or disability-related discrimination, or there may be a failure to make reasonable adjustments to a provision, criterion or practice relating to pension benefits.

13. The Act also makes it unlawful for trustees and managers of occupational pension schemes to discriminate against a disabled member or prospective member of the pension scheme, when carrying out any of their functions relating to the admission and treatment of members of the scheme, or to harass them. As with other claims brought under the Act's provisions on employment and occupation, claims are made to the employment tribunal.

14. The Act also applies to provision of group insurance, such as permanent health insurance or life insurance, by an insurance company for employees under an arrangement with their employer. A disabled person in (or who applies, or is considering applying, to join) a group of employees covered by such an arrangement is protected from discrimination in the provision of the insurance services in

the same way as if he or she were a member of the public seeking the services of that insurance company. The right of redress in this case would be exercised through an employment tribunal (and not the county or sheriff court which under Part 3 of the Act is the normal venue for cases concerning discrimination in the provision of goods, facilities and services).

Discrimination by organisations which hire contract workers

15. The Act covers people who hire contract workers, even though the workers are directly employed by someone else (such as an employment agency). The Act makes it unlawful for a person hiring contract workers to discriminate against them. These disabled contract workers are also protected from unlawful discrimination by their actual employer (eg the employment agency).
16. Both the hirer and the actual employer may have a duty to make a reasonable adjustment in respect of a disabled worker.

Discrimination in relation to other occupations

17. In addition to providing protection for employees and contract workers, the Act also provides protection for disabled people engaged in occupations. Police officers are covered by the Act, and they are treated as employees for the purposes of the Act. Office holders, such as company directors, judges and chairmen or members of non-departmental public bodies are also protected by the Act; however people who hold political office are not covered. The Act also provides protection for partners in firms, barristers and advocates, and

people who are seeking or undertaking practical work experience. These categories of people are protected in a similar way to employees (see paragraph 2 above).

Discrimination by trade organisations and qualifications bodies

18. The Act places duties on trade organisations, as regards disabled members and applicants for membership, in similar terms to the duties on employers as regards employees and applicants for employment. The Act also places duties on qualifications bodies in respect of disabled people in relation to professional or trade qualifications. The provisions are similar to those relating to employees, however there is no duty to make reasonable adjustments when a competence standard is applied to a disabled person. But its application will be unlawful if it amounts to less favourable treatment for a reason related to his or her disability unless the qualifications body can show that the same standard is applied equally to people who are not disabled and the application of it is a proportionate means of achieving a legitimate aim.

Discrimination by providers of employment services

19. The Act says that it is unlawful to discriminate against a disabled person in relation to the provision of vocational guidance or training services, or services designed to assist people to find or retain jobs, or to become self-employed. Providers of employment services must not discriminate against a disabled person by refusing to provide them with a service or providing the service to a different standard or on different terms. It is also unlawful for a provider of employment services to fail to comply with a duty to

make reasonable adjustments to a practice, policy, procedure or to physical features, in circumstances in which the effect of that failure is to place the disabled person at a substantial disadvantage compared to people who are not disabled in relation to the provision of the service. Finally, it is unlawful to fail to comply with a duty to provide an auxiliary aid or service in the same circumstances. The right of redress in cases concerning employment services is through an employment tribunal and not the county or sheriff court (which under Part 3 of the Act is the normal venue for cases concerning discrimination in the provision of goods, facilities and services).

Who does not have duties under the Act?

20. The employment provisions of the Act apply to employers regardless of how many or few employees they have, whether full or part-time. Anyone who is employed under a contract of service or apprenticeship or a contract personally to do any work is counted as an employee. This includes permanent and temporary workers, whether full or part-time. It also includes employees whom the employer contracts out to another organisation. The employment provisions apply to people who are employed wholly or partly within Great Britain, and to people employed wholly outside Great Britain, provided that employment has a sufficiently close connection with Great Britain. Certain employment on-board ships, hovercraft and aircraft is also covered. Members of the Armed Forces are excluded from protection under the Act.

Categories of discrimination and relevant section of Act

Provisions of the Disability Discrimination Act relating to discrimination in the field of employment

Category of discrimination followed by main section(s) or paragraphs of Schedules of Act as amended by SI 2003/1673, details of other relevant statutory instruments and main chapters or paragraphs of Code of Practice on Employment and Occupation:

Unlawful discrimination by employers –
sections 4 and 4A, Chapters 3 and 4 and paragraphs 8.38–8.32

Meaning of ‘discrimination’ –
section 3A and Chapters 3 and 4

Direct discrimination –
section 3A(5) and paragraphs 4.5–4.23

Duty of employer to make adjustments –
sections 3A(2), 4A and 18B and Chapter 5

‘Disability-related discrimination’ –
section 3A(1), 3A(3) and 3A(4) and paragraphs 4.27–4.32

Victimisation –
section 55 and paragraphs 4.33–4.36

Harassment –
section 3B and paragraphs 4.38–4.39

Justification –

sections 3A(3), 3A(4) and 3A(6) and Chapter 6

Contract workers –

section 4B and paragraphs 9.3–9.13

Office holders –

sections 4C–4F and paragraphs 9.14–9.22

Police officers –

section 64A and paragraphs 9.23–9.24

Partners in firms –

sections 6A–6C and paragraphs 9.25–9.31

Barristers and advocates –

sections 7A–7D and paragraphs 9.32–9.41

Practical work experience –

sections 14C and 14D and paragraphs 9.42–9.50

Discrimination by trade organisations –

sections 13 and 14 and Disability Discrimination Act Code of Practice for Trade Organisations and Qualifications Bodies

Discrimination by qualifications bodies –

sections 14A and 14B and Disability Discrimination Act Code of Practice for Trade Organisations and Qualifications Bodies

Discrimination by providers of occupational pensions –

sections 4G–4K and Chapter 10

Discrimination by providers of group insurance –

section 18 and Chapter 10

Discrimination by providers of employment services –

section 21A and Chapter 11

Alterations to premises occupied under leases –

section 18A and schedule 4 Part 1, SI 2000/2531, SI 2004/153 and Chapter 12

Discrimination after the relevant relationship has ended –
section 16A and paragraphs 8.28–8.32

Responsibility for the acts of others –
sections 57 and 58 and paragraphs 3.23–3.25

**Advertisements suggesting that employers will
discriminate against disabled persons –**
sections 16B and 17B and paragraphs 7.11–7.15 and
13.28–13.30

Instructions and pressure to discriminate –
sections 16C and 17B and paragraphs 3.22 and 13.28–13.30

Enforcement, remedies and procedures –
sections 17A, 17B and 25(8), schedule 3 Part 1 and
paragraphs 3.26, 11.23, 13.1–13.18 and 13.28–13.30



Validity of certain agreements –
section 17C, schedule 3A and paragraphs 13.19–13.24

Charities and support for particular groups of persons –
section 18C and paragraph 13.26

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