

Challenging disability discrimination by the DWP – a guide

Background – identifying disability discrimination by the DWP

The Equality Act 2010 stipulates that the DWP must make reasonable adjustments for disabled people. That means the DWP cannot impose fixed administrative processes on claimants that disadvantage them unless it can demonstrate those practices are a proportionate means of achieving a legitimate aim. Some of the most common examples of disability discrimination unlikely to be justifiable are:

- Stopping payments because a person who cannot understand a letter due to learning disability or sensory impairment did not respond to it.
- Summoning claimants to appointments for interviews that they will struggle to get to due to physical, mental or sensory impairment.
- Demanding engagement with work related activity that a claimant could not reasonably be expected to be able to deal with due to disability.
- Sending claimants, whose literacy ability is limited due to disability, complicated forms to fill in under threat of benefits removal, and actually stopping payments, when such forms are not completed and returned.
- Relying totally on generic assessments by agents and ignoring specialist medical evidence that explains things that the claimant was unable to explain at a face to face interview due to disability.

But the DWP does these things all the time. Are you saying the DWP is engaged in widespread activity that is contrary to the Equality Act 2010?

Yes. In 2013 the DWP argued in Court that it was obliged to discriminate against claimants by social security legislation. The Court rejected this totally ridiculous argument.

So is, for example, the DLA to PIP transition process operated by the DWP different to legislation?

Yes. The DWP always gives fixed time-scales for claiming PIP and filling in the “PIP2” disability questionnaire even though the Regulations allow for indefinite extensions of time in both cases. On top of this the DWP must also consider reasonable adjustments to its standard process. So it should not have a fixed system of demanding the completion of complicated forms without help and summoning claimants to consultations with agents regardless of individual circumstances.

Are DWP agents covered by the Equality Act as well as the DWP?

It makes no difference if the DWP hires agents such as Atos, Capita and Maximus to carry out some of its functions. It is the DWP who is responsible and so all actions by agents are the same as if the DWP was carrying out the functions itself.

So the custom and practice of the DWP and the law can be two completely different things. Broadly speaking, if the DWP does something to a disabled person that harms them, and that harm could have been prevented by a practical and realistic change in the way the DWP handled their case, it's likely that the DWP has breached the Equality Act.

What to do if you, or someone you know, is discriminated against by the DWP

NB always remember there is a six month time limit for making an Equality Act claim for discrimination in the County Court. The time limit runs from the last act of discrimination committed, or from a refusal to make an adjustment.

Recommended steps are as follows

- 1. Complain to the DWP identifying the discrimination that has occurred, or is occurring, and making it clear what reasonable adjustments are required.**

The most straightforward way to complain is to use the DWP's Operations Correspondence email address: correspondence@dwp.gov.uk . The Official with overall responsibility for DWP services to claimants is the Operations Director and, at the time of writing, she is called Susan Park, who you can find out more about here: <https://www.gov.uk/government/people/susan-park> . So you may wish to direct any complaints about disability discrimination directly to her.

Under the DWP's complaints policy it has 15 working days to reply.

It is highly unlikely that the DWP will admit it has committed disability discrimination, but it's important to give it a chance to remedy the situation. It may do something to improve the situation.

Always be very specific about what the DWP needs to do to remedy your complaint. Never finish a letter with the problem. Instead, make the solution clear.

So in the case of a claimant in receipt of DLA higher rate mobility because they have been assessed as unable or virtually unable to walk being summonsed to a consultation they cannot get to, and being threatened with termination of their DLA if they don't go, it should be made clear what they need instead. This could be a home visit if they are able to cope with one, or it could be a telephone consultation, which is specifically encouraged by the PIP Regulations. Or if neither of these is suitable then it could be that the DWP should seek information directly from relevant medical professionals, or consider evidence provided by the claimant as well as the DLA case history, or evidence from any ESA assessments if applicable.

If the DWP does not remedy the situation via its complaints procedure the next stage is:

- 2. Write to the Treasury Solicitor stating that if reasonable adjustments are not made you will issue a claim in the County Court.**

The Treasury Solicitor is the DWP's and Secretary of State for Work and Pensions solicitor for the purposes of receiving claims from citizens contemplating bringing legal proceedings against one, or the other, or both. The Treasury Solicitor has been renamed the Government Legal Department:

<https://www.gov.uk/government/organisations/government-legal-department> .

Again state why you believe you are being discriminated against and make it clear what needs to be done to remove the discrimination.

So again make sure you state clearly what reasonable adjustment you are seeking. If you have already suffered because of discrimination make it clear what has gone wrong and why you are seeking compensation. Make it clear you believe your rights under the Equality Act have been breached by, for example, the DWP imposing requirements upon you that you are unable to meet.

Again it is highly unlikely that disability discrimination will be admitted, because it's one hell of an admission to make, so only write to the Treasury Solicitor if you are confident of taking the next step – a claim in the County Court.

3. Make a claim in the County Court

This can be daunting because over the years unfortunately the Civil Courts have given the appearance of drifting away from their fundamental purpose to uphold the rights of Citizens and coming across too much as a money making playground for lawyers. This has been done through ever more complicated rules, procedures and forms that are tough for people to deal with who are not lawyers. And the Courts' Officials as employees of the Government are not always helpful to those who seek to bring a case against the Government.

However, none of this removes your right to bring a case. Here is an extract from binding international law:

Article 13(1) of the United Nations Convention on the Rights of Persons with Disabilities

States parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages”.

And the Equality Act duty of reasonable adjustments also applies to the courts, but not to “judicial acts”. However the UN Convention above amounts to similar obligations being on the courts, even for judges, and so it is reflected in their “Equal Treatment Bench Book”:

<https://www.judiciary.uk/publications/new-edition-of-the-equal-treatment-bench-book-launched/>

So if you are unable to cope with the courts' usual requirements of producing multiple copies of claim forms and particulars of claim in hard copy, then the court must accept a single emailed copy. And if you would struggle to get to hearings then provision must be made by way of, for example, video-link or agreeing to accept paper witness statements in place of personally made statements in court and so on. This gives the opportunity to get the courts doing what they're supposed to do – the people's courts working for the people!

Isn't it incredibly dangerous to issue a claim in Court? I mean wouldn't it be massively expensive?

Issuing your court claim is free if you are getting means-tested benefits and have less than £3,000 in savings as long as you do it yourself (i.e. without hiring a lawyer).

You would only be liable for the DWP's legal costs if **all** the following applied:

- your case was not allocated to the small claims track – unlikely if you're claiming less than £10,000
- you lost your case
- the DWP could show that all the costs it was claiming were costs reasonably incurred – i.e. the DWP can be argued to have not incurred costs where it uses its own salaried lawyers as they are on the pay-roll anyway
- the judge agreed to award the DWP costs against you (they don't have to).

...and even then you would only have to pay any costs at a rate you could reasonably afford. If you're on means-tested benefits with no significant assets this would be likely to be as little as £1 per month.

All this has to be weighed against the risk of doing nothing. If you don't bring a case it's likely the DWP will continue to tell you to do things you can't do and then stop your benefits when you can't do them. This could result in you being made destitute.

What chance do I have? I mean the DWP has access to top lawyers and I'm bringing the case myself. I've no chance have I?

It doesn't matter how good your lawyer is if you've broken the law. A lawyer cannot change what has happened or the law. And judges make allowances for any imbalance in the resources of the parties.

It may not be as intimidating as you might think. Judges are highly trained to be fair, and be seen to be fair. They usually sit alone and are not usually robed. The DWP will probably send a lawyer or two and perhaps a witness. Judges usually sit alone. You can take support as you wish.

Remember the courts are there for you to bring your case. You have an absolute right to use them. They are not a private club for lawyers. And if you can't personally attend then reasonable adjustments must be made: such as paper hearing, telephone or video-link.

How can I bring my case?

An excellent guide can be found here: <http://www.kingqueen.org.uk/dart/>

It's written by Doug Paulley who has brought over 40 cases against various service providers for disability discrimination. It outlines how to fill in the right forms and so on but is not specific to bringing claims against the DWP.

I also have template forms, letters and particulars of claim available and will be adding to my website as time permits.

If you want to speak with me about bringing a claim yourself I provide free advice and information.