



MAKING A COMPLAINT INFORMATION GUIDE

This guidance is to assist disabled people and / or their family members who feel they may have received a less favourable service (discrimination) due to their disability. Disability Cornwall would like to thank the Disability Law Service and Conroys Solicitors for their information and guidance in preparing this document.

What to do first and when

Taking legal action can be expensive, stressful and take a lot of time. Where possible you should try to resolve issues without taking legal action, as it will be quicker and less stressful. The Courts also expect you to try to resolve issues before making a claim. If you make a Court claim without first trying to resolve the issues with the service provider, the Court may decide you have acted unreasonably. In these circumstances you may have to pay some or all of the service provider's legal costs. The Court can also reduce the amount of compensation they give you.

There are strict time limits for taking legal action under the Equality Act 2010. You will have six months minus one day from the date of discrimination to make your claim in the County Court. Some discrimination cases can have shorter time limits, such as three months in employment tribunals, less the one day from the act of discrimination. Generally though the time limit is six months, and it won't be extended because you are trying to resolve the issue with the service provider, so you need to act quickly. If your time limit is running out, you may need to make a claim even if you are waiting for a response from the service provider.

Writing to the service provider

Before considering legal proceedings, you should first write to the service provider and tell them why you are unhappy. You should try to give as much information as possible and tell them why you believe you have been discriminated against. You should also tell them what you want them to do to resolve the situation.

Request a response within a certain period of time and it's usually reasonable to ask for a response within 21 days. If you are close to your deadline for making a claim you can give them a shorter period of time to respond, but tell them why you need a response quicker than 21 days. If you want the service provider to make reasonable adjustments for you it is a good idea to tell them what difficulties you have in accessing their services. You should tell them what changes you require to access

their services and ask that they make these adjustments or give you their full reasons in writing if they are not able to do so. This can help you to decide if they have a good reason for not making the adjustment you require.

Adjustments must be reasonable. If a service provider can show that making an adjustment would not be reasonable, for example: because of the disruption or cost, then you may not be able to insist on the adjustment.

For large companies, you may want to write to their Head Office. Send your letter to someone senior, such as the Head of Customer Services or the Chief Executive. If your complaint is against a small company or you cannot find the Head Office address then send your letter to the owner or manager of the store or branch where you are having problems. A couple of template letters are included at the end.

Equality Questionnaire

You can also ask the service provider to complete an equality questionnaire. This is a useful tool for challenging discrimination and for obtaining information. The questionnaire and guidance on using it can be found at:

www.gov.uk/guidance/equality-act-2010-guidance

You can use the questionnaire to explain what has happened and why you believe this is discrimination. You can also use it to ask questions for example: why haven't they made the requested adjustments? You can also request information such as policies and training records from the service provider. The questionnaire can help you to:

- identify any facts that they dispute
- identify the strengths and weaknesses of your claim
- gather evidence
- decide whether to start legal proceedings, if you have not already done so.

Once you have sent the questionnaire to the service provider, they must respond within eight weeks. The questionnaire and any answers you receive can be used as evidence in any Court proceedings under the Act. If the service provider does not answer the questionnaire, the Court can treat this as evidence the service provider did discriminate against you. This is known as 'drawing an inference' of discrimination. The Court can also do this if they do not respond properly, for example: if they give you misleading answers.

Equalities Conciliation Service

If the service provider does not agree to make the changes you have asked for, you may still be able to resolve the matter without taking legal action. The Equality and Human Rights Commission (EHRC) funds an Equalities Conciliation Service. This involves an independent person, known as the conciliator, who tries to assist you and the service provider to resolve the dispute. This is a free service, but people need to be referred either by the EHRC or by a law centre. Conciliation can only take place if both you and the service provider agree to it.

If you do both agree to conciliation, your time limit for submitting a claim to the Court is extended by three months. This means you will have nine months minus one day to submit your claim.

Making a claim

If you cannot resolve the matter through writing to the service provider, then you may want to consider taking legal action. This can be a complicated process and where possible obtain legal advice from a law centre or a solicitor. At the back of this factsheet we provide a list of organisations you may wish to contact. If you are considering bringing a claim in the County Court, you should seek legal advice first, because you are at risk of costs in the County Court. If you lose your case, the Court can ask you to pay the service provider's legal costs for defending the claim.

Time limit for making a claim

The time limit is six months minus one day from when the discrimination took place. If the discrimination has happened more than once, then you may be able to use the date of the last act of discrimination. If you are asking the service provider to make reasonable adjustments, the date of discrimination will be when they refuse to make the adjustment for you. If they do not respond to your request for adjustments then it is best to use the date that you wrote to them. If you and the service provider agree to conciliation through the Equalities Conciliation Service, your time limit for submitting a claim to the Court is extended by three months, you will then have nine months minus one day to submit your claim.

In very rare circumstances, a Court can decide it is 'just and equitable' or fair to hear the claim, even though it was sent to the Court out of time. You will have to show a very good reason, such as serious illness, for why you failed to make your claim within the correct time limit. If you have missed the deadline for making a claim, you must send the claim form to the Court as soon as possible. You should also send a letter explaining the reason for the delay and any evidence you have, such as a medical certificate from your doctor.

Letter before claim

Before you make a claim you need to send the service provider a letter informing them that you intend to make a claim, known as a 'letter before claim'. If possible, you should get legal advice before sending a letter before claim. However, if this isn't possible your letter should include the following information:

- What you are complaining about
- The legal basis of your claim (see Disability Law Service factsheet: Disabled Consumers & the Equality Act 2010)
- Details of the actions you expect the service provider to take
- Details of any information you want them to provide for you
- The date they need to respond by.

Sending a letter before claim can encourage the service provider to resolve your complaint. If you are asking them to make an adjustment then you should be as

specific as possible. You should also give a reasonable date that you would like to receive a written response by, usually 28 days.

It's advisable to send the letter using special or recorded delivery so the service provider cannot deny receipt.

Starting a Claim

Claims of discrimination by service providers must be made in the County Court. To start your claim at your local County Court, you must complete a Claim Form N1 and return this to them. This is known as 'issuing the claim'. A copy of the Claim Form N1 can be obtained either from the Courts Services website:

www.gov.uk/government/organisations/hm-courts-and-tribunals-service or by visiting your local County Court administration office.

Funding

There are various ways in which you might be able to fund your claim:

1. Private Funding

This is where you pay for the case yourself, but consider your financial capability thoroughly before starting Court action.

2. Conditional fee agreements

Some solicitors may agree to take a case on a 'no win no fee' basis, known as a conditional fee agreement. Details of any agreements will need to be agreed with the solicitor taking the case. Please note that even if you have an agreement with your solicitor you may still need to pay any court fees. You may also need to pay some or all of the service provider's costs if you lose your case. For more information, discuss with your solicitor.

3. Insurance

You might be able to fund the costs of your claim via your home, car or other insurance as many policies include legal expenses insurance as part of their cover. You should check your insurance documents and contact your insurance provider for further details.

4. Legal Aid

If you are eligible for Legal Aid, the Government may cover your costs of taking a case and may also cover the service provider's costs if you lose your case. There are two main tests for Legal Aid. The first is a financial test and if you are on a low income and don't have a large amount of savings then you may be financially eligible for Legal Aid. The second test is that your case must have 'good prospects of success'. A solicitor will need to examine it and decide what the chances of you winning your case are. If they are less than 50%, then you will not be eligible for Legal Aid. If your case is paid for by Legal Aid it will take back the cost of your case from any money or property that the service provider gives you. This is known as the 'Statutory Charge' and your solicitor should give you more information about this.

5. Via the Equality and Human Rights Commission (EHRC)

The EHRC funds some cases it believes are very important. This may be if it thinks the case will change or clarify the law, or if it thinks it will affect a large number of people. If it agrees to fund your case, the EHRC will cover your costs and may also cover the service provider's costs if you lose your case.

Template letters

The Disability Law Service has produced some templates of letters which you can use to draft your letter to the service provider concerned. These letters are designed as a guide only and you will need to change them to suit your particular case, but some general points to consider about your letter are:

- Write the letter as soon as you can which will help you to remember exactly what happened
- Be specific. Explain what happened and why you think it was discrimination
- If you want the service provider to do something, say what you want it to be, which could simply be an apology, or a request for paying you compensation and / or to make a reasonable adjustment
- Remember to include your name, address and any reference number you have
- Read through the letter before you send it to check it makes sense and ideally ask someone else to read it for you as well
- Keep a copy of it so you can prove what you have sent
- If you can, send it by recorded delivery, or you could use email or fax instead, which also provides a record of when the letter was sent
- Keep copies of any replies you receive
- Seek advice if you need it.

Sample letter regarding access

Your name
Address & postcode

Date

To the Chief Executive / Manager (delete as appropriate)

Name of service provider
Their address (either the place you are complaining about or the Head Office)

By Recorded Delivery

Dear (name or Sir / Madam)

Access to your services – disability discrimination

I am writing to complain about an incident that happened on (insert date of the incident you are complaining about.) Explain what happened in as much detail as you can. For example, I was unable to use (describe the service you wanted to use or what you were unable to do) at (describe where it happened so the person receiving the letter will know where you are talking about.)

This is because (describe what prevented you from accessing the service and explain why - for example, the only entrance to your shop is via a flight of 10 steps. I am a wheelchair user and so could not access the shop. As a result, it was impossible / very difficult for me to access your premises and use your services.

(You may wish to include a couple of lines explaining any inconvenience, distress or discomfort which you experienced.) I believe this problem could have been avoided if (make any suggestions you have about what you think the service provider should have in place.) Please make this adjustment or give me your full reasons in writing why you are not able to do so.

If you are not able to make the requested adjustment, please tell me what steps you have taken to meet your legal duty and deal with this lack of access? Please also tell me the steps you will agree to take to put right the problems I have experienced.

Due to the seriousness of this matter please reply to me in writing within 28 days. I look forward to hearing from you.

Yours faithfully
(Your name here)

Sample second letter

Your name
Address & postcode

Date

The Chief Executive (if they have one)

Name of service provider

Their address (probably best to send it to the Head Office if possible)

By Recorded Delivery

Dear (name or sir / madam)

Access to your services – disability discrimination

I am writing in follow up to my letter of (date of complaint letter) complaining about the problems I had experienced. Please find a copy of this letter attached (helpful to resend them the original complaint letter so you don't need to repeat yourself.)

You responded (if they did) to this complaint by letter dated (date of their letter.) However, you have refused to make the adjustments I requested or to give me good reasons why these adjustments cannot be made. (If they have given you some reasons why they cannot make the adjustments but you don't think these are good enough you will need to say why. Otherwise they are likely to repeat these reasons.)

(If they did not respond to your letter of complaint) despite asking that you respond within 28 days, I have not received a response to this letter.

Please respond within seven days of the date of this letter informing me either that you will be making the requested adjustment or giving me your full reasons in writing why you are not able to do so. If you are not able to make the requested adjustment please tell me what steps you have taken to meet your legal duty and deal with this lack of access? Please also tell me the steps you will agree to take to put right the problems I have experienced.

I look forward to hearing from you.

Yours faithfully

(Your name)

Useful organisations for further advice and information

- disAbility Cornwall & Isles of Scilly

Cornwall's Advice & Support Service offers free, impartial and confidential information and advice on any disability related enquiry.

Tel: 01736 759500

Textphone: 07522 970336

Email: advice@disabilitycornwall.org.uk

- Conroys Solicitors

A law firm based in Truro & Exeter, which offers specialist legal advice including, community care, employment, mental capacity and judicial review.

Tel: 01872 272457

Email: econroy@conroys.solicitors.uk

- The Disability Law Service

Offers free and confidential legal advice on disability discrimination to disabled people. It's also able to take on certain cases on behalf of disabled people. In addition to disability discrimination law advice, it can also offer advice about community care, employment and welfare benefits.

Tel: 0207 791 9800

Textphone: 020 7791 9801

Email: advice@dls.org.uk

- Equality and Human Rights Commission (EHRC)

The EHRC is a national organisation set up to monitor and tackle discrimination. It operates a telephone helpline for people with discrimination problems. The EHRC also publishes many useful guides and leaflets, which can be obtained via its helpline. In some cases, the EHRC will advise and represent people who have discrimination claims and can also refer cases to the Equalities Mediation Service.

Tel: 0808 800 0082

Textphone: 0808 800 0084

www.equalityhumanrights.com

- Legal Services Commission

This can provide contact details of solicitors and other organisations that can advise and assist you, subject to eligibility, under the free Legal Help Scheme.

Tel: 0845 608 1122

www.clsdirect.org.uk

- The Law Centres Network

Defends the legal rights of people who cannot afford a lawyer. Their website provides an online enquiry contact facility and a list of all UK Law Centres, at present

Avon & Bristol is the nearest to Cornwall.

www.lawcentres.org.uk

- The Law Society

Provides the details of solicitors who can advise on disability discrimination cases.

www.lawsociety.co.uk