Headway
the brain injury association

Making a complaint about treatment at work

after brain injury

This publication has been written to help you with understanding what discrimination in the workplace can look like for someone with a brain injury, the stages involved in making a complaint and where you can get support for this process.

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Introduction

If you think that you have been discriminated against in the workplace because of your brain injury, you might have a right to make a complaint. There are several stages involved in doing this and several different possible outcomes.

This publication has been written to help you with understanding what discrimination in the workplace can look like for someone with a brain injury, the stages involved in making a complaint and where you can get support for this process.

General information and advice about being back at work after brain injury is available in our publication *Returning to work after brain injury*.

The information in this publication does not replace clinical guidance from medical professionals. You should always get advice from your GP or other suitably qualified professional for help with managing the effects of brain injury.

Types of discrimination

Treating someone unfairly due to their disability (or other protected characteristic) is called discrimination. There are several different forms of discrimination that are prohibited under the Equality Act 2010, including direct discrimination, indirect discrimination, discrimination arising from

disability, failure to make reasonable adjustments, victimisation and harassment. This section provides a brief overview of these forms of discrimination.

Direct discrimination

Being treated worse or differently on the basis of one's disability (or other protected characteristic) is called direct discrimination. It is also possible for someone associated with the person with a disability (such as a relative, friend or carer) to be directly discriminated against if they are treated worse than others because of the disability of the person they are caring for. This is called direct discrimination by association. Being wrongly assumed to be disabled is also a form of direct discrimination known as direct discrimination by perception.

Indirect discrimination

Indirect discrimination is where rules, practices or policies are set for everyone, but some people are disadvantaged due to having a protected characteristic, such as having a disability.

Discrimination arising from disability

This form of discrimination occurs when someone is treated unfavourably because of something directly connected to their disability.

Failure to make reasonable adjustments

Employers have a legal responsibility to make 'reasonable adjustments' to a workplace or role to accommodate for a disabled employee. Reasonable adjustments can include allocating some of the employee's work to someone else, making adjustments to the building, allowing flexibility with working hours and providing specialist equipment.

An employer should not expect or request that the person with disability pay for the cost of making these adjustments themselves.

Victimisation

If someone is treated badly because they have made a claim or complaint of disability discrimination, this is known as victimisation. As with direct discrimination, it is not only disabled people who may be victimised, but others associated with the disabled person as well.

Harassment

Someone will have a claim for harassment if they are a victim of behaviour which relates to disability and which is intended to, or has the effect of, creating an intimidating or hostile environment for them. Offensive comments made about one's disability is also a form of harassment. Someone can be the victim of harassment even if the behaviour is not directed at them specifically, for example if a hostile work environment has been created for all employees due to one employee harassing another.

Having a protected characteristic means you have a right not to be treated less favourably, or subjected to an unfair disadvantage, because of that characteristic. For instance,

you should not be discriminated against because of your disability. For guidance on the legal definition of 'disability', refer to our publication *The Equality Act 2010 - a guide for brain injury survivors*.

Discrimination can take place at the stage of applying and interviewing for a job, as well as during employment. An example of this is someone with a brain injury being invited for a job interview at a location that is not accessible to them due to being a wheelchair user, and the employer refusing to make alternative arrangements, despite being informed of the accessibility needs.

Mitigating circumstances

There are some instances when indirect discrimination and discrimination arising from disability can be justified, if the person accused of discrimination can prove that their actions were "*a proportionate means of achieving a legitimate aim*."

To be 'legitimate', an aim should be legal, should not be discriminatory in itself and must represent a real objective consideration such as the health, welfare and safety of individuals.

An example of this is an employer requiring all machine operators to complete an eye test. This discriminates against blind or partially sighted people, but the employer argues that the eye tests are necessary to protect the safety of their workforce.

It is also important to be aware that an employer can legally dismiss you from employment if they have tried to make reasonable adjustments and it is still not possible for you to do the job satisfactorily or safely.

Before making a complaint

Before you make a formal complaint, consider having a discussion with your employer about the issue first, if this is appropriate and safe for you to do. You might wish to do this face to face with your employer, in writing or via email.

Your employer might not have a good enough understanding of what a brain injury is, so it may be that you need to be clearer with them about your support needs.

It is important to consider that in some cases, a brain injury can affect a person's ability to process information, remember things, make decisions, interpret others' behaviours or react to situations appropriately. Think carefully about whether these are factors in your complaint at all, or whether they are affecting your judgement of the situation. Having an open and honest conversation with your employer can help to clarify this.

It can also be helpful to talk your complaint through with someone you trust, such as a colleague, relative or close friend, especially someone who was witness to the possible discrimination. They might be able to provide you with another perspective.

It can be helpful to make this initial stage of a complaint in writing so that you have a paper trail of the discussions and actions taken. This will be helpful if you need to escalate the case later.

Stages of making a complaint

There are three formal stages to making a complaint about treatment at work.

1. Local resolution
2. Early conciliation
3. Employment tribunal

These are discussed in turn below.

1. Local resolution

Start things off by talking directly to the person with whom you have a complaint or your employer, if this is an appropriate and safe option. It might be possible to resolve the complaint quickly and without needing to take things further (which can be costly, stressful and time-consuming). A formal written complaint is often referred to as a grievance.

Write down details of the concerns or complaints that you have. Include dates and times of key events so that you have an accurate record of the issue. You should also try to identify what type of discrimination has taken place – information in the previous section Types of discrimination might be helpful to refer to, while Citizens Advice (for England, Scotland and Wales) also has plenty of information about this on their website at www.citizensadvice.org.uk/work/discrimination-at-work/discrimination-at-work. For advice from an advisor in Northern Ireland, visit www.citizensadvice.org.uk/about-us/northern-ireland.

Do note that if your complaint is against a colleague, your employer is still responsible for dealing with the complaint - this is known as ‘vicarious liability’.

Find out if your employer has a grievance procedure that you can follow. Details of this should be available from your workplace’s staff handbook, a complaints policy, or a Human Resources (HR) team.

2. Early conciliation

If you are unable to resolve the complaint through a local resolution, you should contact the Advisory, Conciliation and Arbitration Service (ACAS) if you are in England, Scotland or

Wales. If you are in Northern Ireland, you should contact the Labour Relations Agency (LRA). Contact details are available at the end of this publication.

You should do this within 3 months minus one day of the date that the incident at work leading to your complaint took place. This is known as the "primary limitation date".

ACAS or LRA will offer you an 'early conciliation' - this is where someone called a 'conciliator' will first speak to you about your complaint and how you want it to be resolved. They will then contact your employer to discuss this with them and attempt to reach an agreement.

Remember that you can have someone else act as your representative throughout a complaints process, such as a trade union official or a solicitor.

If you decline an early conciliation from ACAS/ LRA, or an agreement cannot be reached with your employer, ACAS/ LRA will produce a certificate for you. Keep this certificate safe, as you will need it for the next stage.

3. Employment tribunal

Before you apply

If you feel that your complaint has not been resolved through an early conciliation, you can take your case to an employment tribunal.

You will need the certificate that ACAS/ LRA provided at the early conciliation stage. Limitation is paused from the day after you submit the Early Conciliation Form until the date you receive the ACAS certificate.

Generally you will have a minimum of one calendar month from the date of the Certificate to issue a claim in the Employment Tribunal. You will also need to have evidence to support your

case - this can include medical reports, relevant emails, letters from people who support you and any other details relating to your brain injury such as when it happened and how it affects you on a day-to-day basis.

Legal representation

Employment tribunals are legal procedures, so you will probably need legal representation. You might also wish to get legal advice before beginning an employment tribunal. ACAS, Citizens Advice (in England and Wales), Citizens Advice Scotland or Law Centre NI (in Northern Ireland) can provide helpful advice at this stage - details are available at the end of this publication.

The UK government's Legal Aid scheme can help with the costs of legal advice in a court or tribunal if you cannot afford to pay the legal costs yourself and your case/personal circumstances make you eligible. It is only available in England and Wales, although different legal aid systems exist for Scotland and Northern Ireland.

For more information, click on the relevant links below:

Legal Aid in England and Wales: www.gov.uk/legal-aid.

Legal aid in Scotland: www.mygov.scot/legal-aid.

Legal aid in Northern Ireland: www.justice-ni.gov.uk/topics/legal-aid.

Headway's Solicitor's Directory might be a helpful resource from which to find a solicitor with expertise in handling brain injury cases - although most of these are personal injury solicitors and may therefore not be able to support you with an employment tribunal case. For more information, including advice on choosing the right solicitor for you, visit

www.headway.org.uk/supporting-you/in-your-area/head-injury-solicitors-directory.

You can also find a solicitor through The Law Society (if you are in England or Wales), The Law Society of Scotland or The Law Society of Northern Ireland - although these solicitors may not have experience in handling brain injury cases. Details are available at the end of this publication.

Applying

If you are in England, Scotland or Wales, you can apply for a tribunal online or by downloading and completing a form. You can apply online or access the form from the following link: www.claim-employment-tribunals.service.gov.uk.

If you need help with the online system, you can call the Employment Tribunal customer contact centre:

Telephone: 0300 323 0196
Telephone (Welsh): 0300 303 5176
Telephone (Scotland): 0300 790 6234

Textphone (England and Wales): 18001 0300 323 0196
Textphone (Scotland): 18001 0300 790 6234

If you are in Northern Ireland, you will need to apply by contacting the Industrial Tribunal and Fair Employment Tribunal and completing a form called ET1 (NI).

Further information is available from the following link: www.nidirect.gov.uk/articles/employment-related-tribunals. If you need support with your claim, contact Advice NI on 0800 915 4604 or advice@adviceni.net. Someone from the tribunal will contact your employer and give them a chance to offer their input to the case. The case might then go ahead to the next step, called a ‘hearing’.

Guidance about what to expect from a hearing is available from:

- Citizens Advice (for England and Wales): www.citizensadvice.org.uk/work/employment-tribunals/employment-tribunals/the-tribunal-hearing/attending-your-employment-tribunal-hearing/

- Citizens Advice Scotland: www.citizensadvice.org.uk/scotland/work/employment-tribunals/employment-tribunals/the-tribunal-hearing/attending-your-employment-tribunal-hearing

- NI Direct: www.nidirect.gov.uk/articles/employment-related-tribunals

Outcome

A decision may be reached at the end of the hearing, or you might need to wait for one to be reached. If this is the case, you will receive a letter by post informing you of the hearing's outcome.

There are several possible outcomes of the hearing, depending on whether the decision is in your favour and what the original complaint was. For example, you might be able to return to your original job if you received an unfair dismissal, or you might be entitled to receive compensation. Alternatively, the hearing might go in the employer's favour.

You can apply for a reconsideration if you are not satisfied with the outcome.

Other sources of support

Details of services that might be able to support you through the process of making an employment related complaint are given below.

The organisations listed below are provided for information purposes only. Their inclusion does not imply endorsement, recommendation, or approval by Headway. Users should make their own assessment of any organisation or service before engaging with them.

- The Advisory, Conciliation and Arbitration Service (ACAS) offers free, confidential and impartial advice on all employment-related issues, to employers and employees in England, Scotland and Wales. There is lots of helpful guidance on their website and a helpline that can offer confidential advice. More information is available at www.acas.org.uk, or you can contact the helpline on 0300 123 1100.

- Support in Northern Ireland is available from the Labour Relations Agency, which offers advice on employment rights issues. For more information, visit the LRA website at www.lra.org.uk. To ask about employment rights, call 03300 555 300. If you are in the process of conciliation, call 03300 552 220.

- If you are a trade union member, you can contact your union representative for advice and support.

- Your local Citizens Advice (England and Wales), Citizens Advice Scotland (Scotland) or Law Centre NI (Northern Ireland) can also offer advice.

  - Citizens Advice: www.citizensadvice.org.uk/work
  - Citizens Advice Scotland: www.citizensadvice.org.uk/scotland/work/get-help/what-help-can-i-get-with-a-problem-at-work-s/
  - Law Centre NI: www.lawcentreni.org

- The Equality, Advisory & Support Service can offer advice on equality and human rights issues across England, Scotland and Wales. You can call their helpline on 0808 800 0082 or use the contact form available at www.equalityadvisoryservice.com/app/ask. More information is available at www.equalityadvisoryservice.com/app/home.

- For help with finding a solicitor, contact:
  - The Law Society (England and Wales): www.solicitors.lawsociety.org.uk
  - The Law Society of Scotland: www.lawscot.org.uk/find-a-solicitor
  - The Law Society of Northern Ireland: www.lawsoc-ni.org/solicitors

- Finally, don't forget to get advice and support from your friends, family and colleagues throughout the complaints process. Headway's helpline, local groups and branches and online communities can also offer support. For more information, visit www.headway.org.uk/supporting-you.

Acknowledgements

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We hope that this has been a helpful resource. Please consider sharing your feedback with us by scanning the QR code or by visiting our publication feedback survey https://uk.surveymonkey.com/r/hwpublications.

Learn more and support our work at www.headway.org.uk/get-involved.

This information was last reviewed in 2024.

We're here to listen.

If you need support, or have a question about brain injury, contact our free nurse-led helpline:

0808 800 2244
helpline@headway.org.uk

0115 924 0800 | enquiries@headway.org.uk
www.headway.org.uk

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Headway – the brain injury association is registered with the Charity Commission for England and Wales [Charity No. 1025852] and the Office of the Scottish Charity Regulator (Charity No. SC 039992]. Headway – the brain injury association is a company limited by guarantee registered in England [No. 2346893].