Headway
the brain injury association

Discrimination

after brain injury

This publication outlines the important aspects of how the Equality Act works in practice, before discussing the different forms that discrimination can take and how this might affect brain injury survivors or others around them. It then provides general guidance for how to raise a complaint about discrimination.

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Contents

Introduction 1
Types of discrimination 2
Direct discrimination 2
Indirect discrimination 3
Discrimination arising from disability 3
Failure to make reasonable adjustments 4
Victimisation 4
Harassment 5
Disability discrimination in practice 6
Disability and employment 6
Disability and education 6
Access to services 7
Housing 7
Transport 8
What to do if you feel you have been discriminated against 8
Useful organisations 10
Acknowledgements 11

Introduction

It is unlawful for someone to discriminate against anyone else because of their disability. The law that protects against such treatment in the United Kingdom is contained in the Equality Act (2010).

Many people can be legally classified as ‘disabled’ after brain injury under the Equality Act, if their brain injury is ‘substantial’, ‘long-term’ and affects their ability to complete ‘normal daily activities’.

This publication outlines the important aspects of how the Act works in practice, before discussing the different forms that discrimination can take and how this might affect brain injury survivors or others around them. It then provides general guidance for how to raise a complaint about discrimination.

A disability is referred to as a 'protected characteristic'. This means that it is an aspect of who you are, and you therefore should not be discriminated against because of it.

Types of discrimination

There are several different types of discrimination that are prohibited under the Equality Act, the most relevant of which are: direct discrimination, indirect discrimination, discrimination arising from disability, failure to make reasonable adjustments, victimisation and harassment. It is helpful to be familiar with the different types of discrimination, in the unfortunate event that you need to make a complaint.

This section provides a brief overview of these types of discrimination, along with examples of how they might be experienced by brain injury survivors.

Direct discrimination

Being treated worse or differently on the basis of one's disability (or other protected characteristic) is called direct discrimination. An example of this is a brain injury survivor being rejected for a place on a drama course on the basis of them being a wheelchair user.

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. An example of this is a friend of a brain injury survivor not being served at a cafe because the survivor has disinhibition and is therefore shouting a lot.

Being wrongly perceived as being disabled is also a form of direct discrimination known as direct discrimination by perception. An example of this is a brain injury survivor being denied a job interview at a bank because they have disclosed brain injury on their application form. The employer wrongly makes an assumption that the brain injury means that the applicant cannot handle money responsibly.

Indirect discrimination

Indirect discrimination is where rules, practices or policies are set for everyone (both disabled and non-disabled people), but some people are disadvantaged due to having a protected characteristic, such as having a disability. An example of this is a brain injury survivor requesting flexible working hours due to struggling with fatigue and being denied this purely because it is against the company's standard policy.

Discrimination arising from disability

This form of discrimination occurs when someone is treated unfavourably because of something connected to their disability. An example of this is a care provider withdrawing care from a brain injury survivor because their memory problems have caused them to forget appointments.

It is important to note that if the person accused of discrimination did not know, or could not have been reasonably known about the disability, they will not be guilty of discrimination arising from disability. This is why it is always

advisable to share some level of information about one's brain injury with others such as an employer.

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.

An example of failure to make reasonable adjustments is refusing to allow a brain injury survivor with continence issues to relocate their work desk so that they are closer to the office toilets.

Further information on the duty to make reasonable adjustments for people with brain injuries can be found in our publication *The Equality Act – a guide for brain injury survivors.*

Victimisation

If someone is treated badly only because they have made a 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. An example of this is an employer denying a promotion to an employee purely because they have helped their brain injured colleague to start a disability discrimination case.

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. An example of this is a bus driver making sarcastic remarks about a brain injury survivor's difficulties with walking so that the survivor no longer feels comfortable or safe travelling on their bus.

Someone can be the victim of harassment even if the behaviour is not directed at them specifically. For example, if someone feels that an offensive work environment has been created because an employer keeps making fun of a brain injured colleague's speech problems.

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.

Disability discrimination in practice

There are many different situations and settings in which someone may unfortunately experience discrimination. In this section we cover a few of the situations in which this might come up for brain injury survivors.

Disability and employment

It is against the law for an employer to discriminate against a disabled employee, for example, in the terms of employment offered and in the opportunities for promotion, transfer or training.

Employers also 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. Failure to make such adjustments is a form of discrimination.

It is important to note that an employer can be 'vicariously liable' (i.e. they are held to be responsible) for discrimination committed by another employee, unless the employer can show that they took all reasonable steps to prevent the discrimination.

Disability and education

It is unlawful for education providers to discriminate against, harass or victimise pupils or prospective pupils because of disability, or to fail to make reasonable adjustments for such pupils. For example, education providers may not discriminate with regard to admissions, the provision of education, policies or procedures, or the exclusion of pupils.

Examples of reasonable adjustments might include allowing students additional time to complete assignments or permitting the use of specialist equipment to help the student with their studies, such as allowing a student to use a Dictaphone to record lectures.

Access to services

It is against the law for service providers to discriminate against, harass or victimise people in the provision of services. Service providers are also under a duty to make reasonable adjustments for disabled people in the way they deliver their services.

Examples of reasonable adjustments might include ensuring there are no physical barriers to access for disabled people or providing disability awareness training for staff that have contact with the public.

Housing

It is unlawful for landlords or property managers to treat someone unfairly or differently because of a protected characteristic such as a disability. A landlord, property manager or property controller also has a legal responsibility to make ‘reasonable adjustments’ under the Equality Act. This can apply to things such as policies, practices or terms of agreement, such as providing a copy of your tenancy agreement in an accessible form. It can also include making certain changes to the home such as changing the colour of walls or installing a temporary grab rail. It does not include removing or making physical changes to the property, such as installing ramps or changing the structure of the building.

(You can still ask for these changes, but there is no legal requirement for your landlord/ property manager/ property controller to agree).

Transport

Public transport companies cannot discriminate against a passenger due to a protected characteristic, such as a disability. Reasonable adjustments for transport companies include rail services offering assistance to get on or off a train or bus services offering spaces for wheelchairs. Taxis must also assist and accept wheelchair user passengers.

Further guidance on the rights of disabled passengers is available on the UK government website at www.gov.uk/guidance/rights-of-disabled-passengers-on-transport.

What to do if you feel you have been discriminated against

If you feel that you have been discriminated against, there are a number of steps you can take.

It can be an important step to **first identify whether you are legally classified as disabled under the Equality Act** (or whether you have been discriminated against on the basis of another protected characteristic). Further guidance on what is legally considered to be a 'disability' is available in our publication *The Equality Act – a guide for brain injury survivors.*

You should also **try to identify what type of discrimination has taken place**. Information in the section Types of discrimination might be helpful for this, but if you are still not sure further guidance is available on the Citizens Advice

website at www.citizensadvice.org.uk/law-and-courts/discrimination.

You should also **start to keep a written record of key dates and detailed information** relating to the nature of your complaint, as this will be helpful for your case if you need to escalate things. Include details of how the discrimination harmed or disadvantaged you, as this will be an important factor in a discrimination case, for example if you lost your job due to victimisation.

Consider **getting input and guidance from others** who were witnesses to the discrimination. It can be helpful to get another person's perspective if, for instance, you have memory problems and cannot recall key details, or if you struggle to process information.

It is important to remember that the police will not deal with a discrimination complaint as discrimination is not a criminal offence. You will therefore need to take steps yourself. It can help to have someone to support you with this process, such as a family member, trade union representative or an HR colleague.

Next steps include:

- Complain directly to the person or organisation through their complaints procedure;

- Use an independent mediator to resolve the issue or contact a service ombudsman, for example a Housing Ombudsman if your complaint is against a landlord, or The Local Government and Social Care Ombudsman if your complaint is against a social care worker;

- Make a claim in court or through a tribunal.

Further guidance on the process of making a complaint is available from Citizens Advice. You can contact your nearest Citizens Advice branch or visit their website at www.citizensadvice.org.uk/law-and-courts/discrimination.

Useful organisations

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.

Advisory, Conciliation and Arbitration Service (ACAS)
Web: www.acas.org.uk
Helpline: 0300 123 1100

Citizens Advice
Web: www.citizensadvice.org.uk
Adviceline (England): 0800 144 8848
Adviceline (Wales): 0800 702 2020

Equality Advisory and Support Service
Web: www.equalityadvisoryservice.com
Advice line: 0808 800 0082

Equality and Human Rights Commission
Web: www.equalityhumanrights.com/en

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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 2023.

We're here to listen.

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

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helpline@headway.org.uk

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