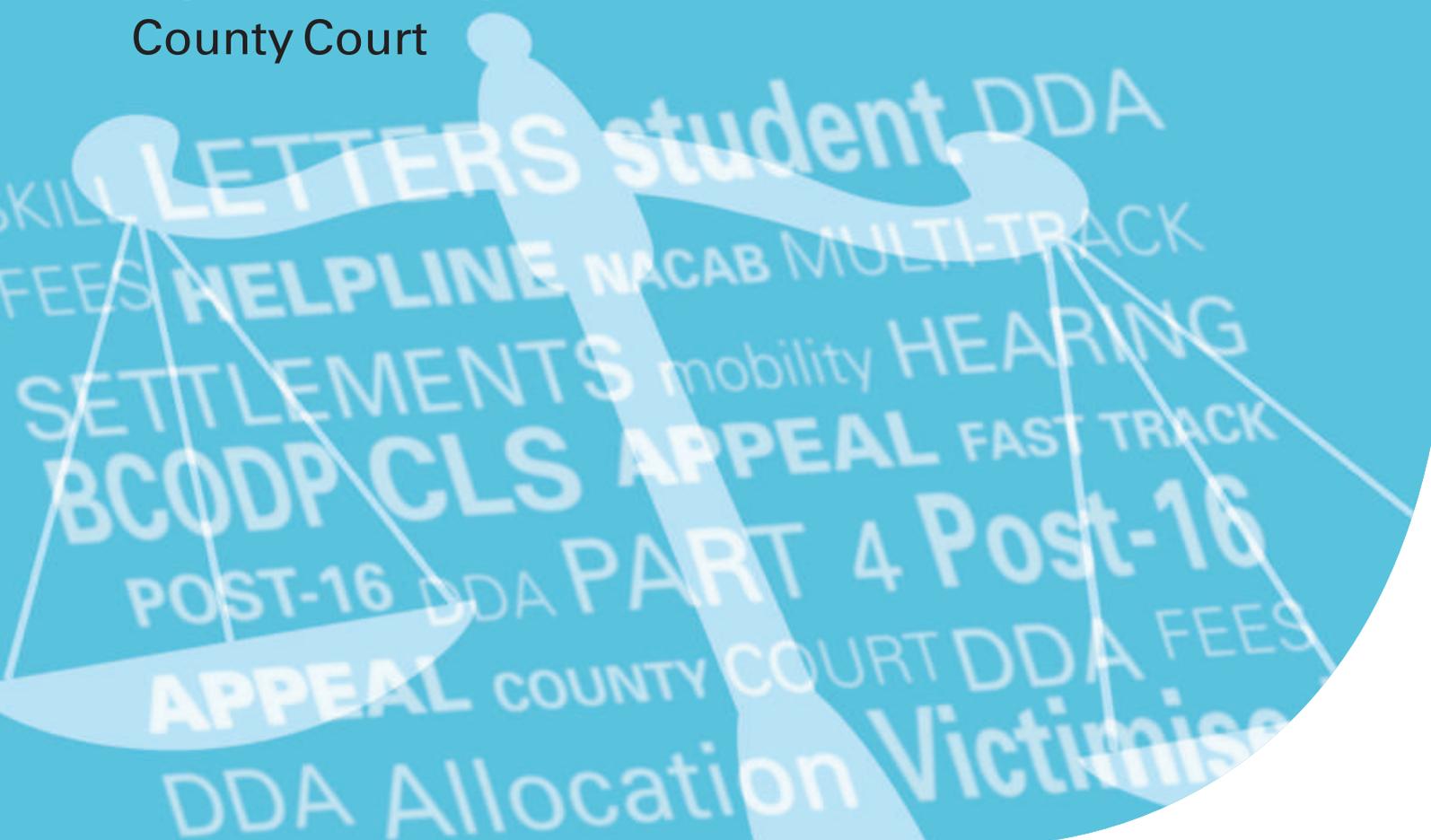


# Education

## How do I make a claim?

A guide to taking a Part 4 Post-16 DDA case to a County Court



## **The Disability Rights Commission**

The Disability Rights Commission (DRC) is an independent body, established by Act of Parliament to eliminate the discrimination faced by disabled people and promote equality of opportunity. When disabled people participate – as citizens, students, customers and employees – everyone benefits. So we have set ourselves the goal of ‘a society where all disabled people can participate fully as equal citizens’.

We work with disabled people and their organisations, the business community, Government, public sector agencies and the education sector to achieve practical solutions that are effective for employers, service providers, education providers and disabled people alike.

There are about 10 million disabled people in Britain – one in five of the population. This includes people with epilepsy, cancer, schizophrenia, Down’s Syndrome and many other types of impairment.

Under the Disability Discrimination Act 1995, legal rights and obligations affecting disabled people’s access to services, employment and education are in force. The DDA was amended in 2002 to include education, some duties came into force in September 2002, some in September 2003 and some will come into force in September 2005.

Many people are still not aware that they have many new rights. In addition education providers, employers and service providers are often unsure how to implement ‘best practice’ to make it easier for disabled people to use their services or gain employment.

The DRC has offices in England, Scotland and Wales. For further details of how we can help you, please contact our Helpline – contact details are given on the back cover of this publication.

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# 1. Introduction

Are you a student or prospective student who has been discriminated against for a reason relating to your disability by a provider of Post-16 education?

If so, you may be able to obtain a remedy for the discrimination by taking the education provider (such as a university or college) to the county court. Under the Post-16 sections of Part 4 of the Disability Discrimination Act (DDA), it is against the law for a provider of Post-16 education (and other related services) to discriminate against you because of your disability.

The DRC Helpline (see the back cover for details) can give you advice and information about the DDA and about your claim. Other organisations including law centres, Citizens Advice Bureaux or solicitors may be able to give you legal advice and represent you. (See section 5 – Useful contacts.)

This booklet should help you to decide if you have a claim and how to pursue it, however it only provides guidance for making claims in England and Wales.

The DRC has issued a statutory Code of Practice for providers of Post-16 education and related services which is available from the DRC Helpline or the DRC website [www.drc-gb.org](http://www.drc-gb.org). Although it is not the law itself, the Code provides guidance on the law. It also gives practical guidance on how to avoid discrimination against disabled people and students wanting to access education or other related services. The Code has to be taken into account by courts when relevant. There is also further information available on the DRC website.

There is a separate guide to assist in making claims under Part 4 of the DDA against schools. This is available from the DRC Helpline or website.

In the interests of brevity, the masculine pronoun (he/his) has been used throughout this booklet.

# 2. Can I make a claim?

## 2.1 Does the education provider have duties under Part 4 (Post-16) of the DDA?

The Act covers:

- universities and other institutions in the higher education sector
- colleges of further education and other institutions in the further education sector
- local education authorities securing further education, including adult and community education
- schools providing further education for adults
- local education authorities providing the statutory youth service
- other specific institutions listed in regulations (see Appendix 3).

If your education provider is not included in this list of institutions then it does not have duties under Part 4 of the DDA. Other education providers may be covered by Part 3 of the DDA. Part 3 covers discrimination in the provision of goods, facilities and services.

- Any institution providing Post-16 education (for example wholly privately-funded colleges) that is not covered by the Post-16 provisions of Part 4 of the DDA is likely to be covered by Part 3 of the DDA.
- Non-statutory youth services (such as clubs and activities run by the Scouts or churches) are not covered but may be covered by Part 3.
- Students' Unions are not covered by Part 4 but are covered by Part 3.

## 2.2 Am I protected by the DDA?

### Am I disabled?

The DDA protects disabled people. The Act sets out the circumstances in which a person is 'disabled'. This is different to any other definition of disability – although clearly there may be an overlap with other definitions. You may be in receipt of disability benefits or Disabled Students Allowance but this does not necessarily mean you meet the definition of disability under the DDA. By the same token, you do not need to be in receipt of disability benefits to meet the definition. Nor does it follow that if you had a statement of special educational needs at school (or still have one) that you will automatically meet the definition. You may receive support from your university or college because of a learning difficulty but not all learning difficulties are covered by the definition of disability in the DDA. For example, all students with dyslexia might receive extra time in exams under a general university policy, but only students with severe dyslexia are likely to be covered by the definition of disability.

The DDA says you are disabled if:

- you have a **physical** or **mental impairment**
- this has an **adverse effect** on your ability to carry out normal day-to-day activities
- the adverse effect is **substantial** (meaning more than minor or trivial)
- the adverse effect is **long term** (meaning it has lasted for 12 months, or is likely to last for more than 12 months or for the rest of your life).

### Impairment

The word 'impairment' describes any condition, state or illness, either mental or physical, visible or hidden. It does not matter whether your impairment has been present since birth or has developed during your life.

## **Mental impairment**

A mental impairment could be a life-long condition such as autism or severe dyslexia. A mental impairment could also be a mental illness such as bipolar affective disorder (or 'manic depression'). If you have a mental illness, the DDA says it must be 'clinically well-recognised'. This means it must be recognised by a respected body of medical opinion such as the World Health Organisation.

## **Normal day-to-day activities**

At least one of these areas must be substantially and adversely affected by your impairment:

- mobility
- manual dexterity
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand
- understanding of the risk of physical danger.

A normal day-to-day activity is something that is 'normal' for most people, and that is carried out on a daily or regular basis. Normal day-to-day activities do not include activities that are only normal for a particular person or a group of people. For example, further and higher education, work and hobbies are not normal day-to-day activities, because no form of studying or work, and no hobby, is 'normal' for most people.

Examples of normal day-to-day activities are getting out of bed, getting washed and dressed, moving about, travelling, socialising, going shopping, cooking, eating, and so on but, in any event, it must come within one of the eight areas of day-to-day activity listed above.

## **Substantial adverse effect**

When considering whether your impairment has a substantial adverse effect the DDA says that any treatment or correction should not be taken into account. This includes medical treatment or the use of a prosthesis (such as an artificial limb) or other aid (for example, hearing aid). The only things which are taken into account are glasses or contact lenses. Therefore you should think about the effect which your impairment would have without treatment.

The important thing is to work out exactly how your impairment affects you. Remember to concentrate on what you **can't** do, or find difficult, rather than on what you can do.

To decide if an impairment has a substantial adverse effect on day-to-day activities, think about the time you spend on a task or activity and the way in which you carry out a task.

### **For example**

If you have a hearing impairment, being unable to hold a conversation with someone talking normally in a moderately noisy place may be a substantial adverse effect. Being unable to hold a conversation in a very noisy place such as a nightclub may not.

### **For example**

If your disability affects your mobility, being unable to travel a short journey as a passenger in a vehicle could be a substantial adverse effect. So could only being able to walk slowly or with unsteady or jerky movements. But having difficulty walking without help for about 1.5 kilometres or a mile without having to stop would not.

## **Medical evidence**

If the education provider does not agree that you are disabled, it is useful to get some medical evidence from your GP or consultant about your disability, its effect, any treatment and the likely effect of your impairment if you were not having treatment. You may find it helpful to show your GP the DDA definition of impairment.

## **Severe disfigurements**

A severe disfigurement is considered to be a disability depending on its severity. This will depend partly on where it is on your body; for example, a birthmark on your back is unlikely to be a severe disfigurement, whereas a similar mark on your face may be considered severe. You do not have to show that it has a substantial adverse effect on normal day-to-day activities.

## **Special provisions:**

- If the effects of your impairment fluctuate they may not always have the same impact on your day-to-day activities and the effects may even disappear for periods of time. Fluctuating conditions are covered as long as the substantial adverse effect is more likely than not to recur.
- If you have a progressive condition such as HIV or multiple sclerosis or arthritis which in the future will have a substantial adverse effect, you will be considered to have a disability from the point when the condition has an effect even though it is only a minor effect.
- Past disabilities are covered provided that, when you had them, they were long term and had a substantial adverse effect on at least one day-to-day activity.
- If you are registered as blind or partially sighted you will be automatically considered disabled under the DDA.

## **Conditions which are specifically excluded from the DDA:**

- hayfever
- a tendency to start fires or steal
- exhibitionism
- voyeurism
- a tendency to inflict physical or sexual abuse
- tattoos and decorative body piercings
- addictions to substances
- addictions such as alcohol and nicotine are excluded from the definition of disability, unless they have resulted from medical treatment. For example, an addiction to prescribed painkillers could be covered by the definition if it meets all the conditions outlined above. Subsequent, separate conditions which arise from the addiction (for example, cancer arising from smoking or cirrhosis of the liver arising from alcohol addiction) are not automatically excluded.

## **Further information**

For more information and examples, follow the link to the Government's guidance on the definition of disability at [www.drc-gb.org/uploaded\\_files/documents/2008\\_229\\_guidance.doc](http://www.drc-gb.org/uploaded_files/documents/2008_229_guidance.doc)

## **Future changes**

If it becomes law, the new Disability Discrimination Bill will make amendments to the definition of disability within the existing DDA. These changes will include removing the requirement for mental illness to be clinically well-recognised and including HIV, multiple sclerosis and some forms of cancer from the point of diagnosis (as opposed to the date when they first have an effect).

## Checklist – am I disabled?

You may find this checklist helps you to identify whether or not you are likely to be covered by the definition of disability in the DDA.

Tick here

### Do I have:

A physical impairment

A mental impairment

Is my mental impairment a mental illness?

If so, is it clinically well recognised?

### My impairment is \_\_\_\_\_

### My impairment has an adverse effect on my:

Mobility

Manual dexterity

Physical co-ordination

Continence

Ability to lift, carry or otherwise move everyday objects

Speech, hearing or eyesight

Memory or ability to learn, concentrate or understand

Understanding of the risk of physical danger

### I think the adverse effect is substantial because:

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### The effect:

Has lasted more than 12 months

Is likely to last more than 12 months

Is likely to last for the rest of my life

### I have the following medical evidence:

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## **Am I a student?**

'Student' is defined by the DDA as a person who is attending, or undertaking a course of study at an educational institution. It doesn't matter what type or level the course is, or whether it is being studied on a full-time, part-time or distance-learning basis. The definition includes home and overseas students.

Some duties apply in respect of prospective students as well as current students.

If you think you have been discriminated against by an education provider who is your employer, there is a separate guide to taking a claim under Part 2 of the DDA (concerning discrimination in employment).

If you think you have been discriminated against by an education provider as a member of the public rather than as a student or prospective student, there is a separate guide to taking a claim under Part 3 of the DDA (concerning discrimination in the provision of goods, services and facilities).

## **2.3 Have I been discriminated against?**

### **Have I been discriminated against when applying for a place?**

It is unlawful for an education provider to discriminate against a disabled person:

- in the arrangements it makes for determining admissions to the institution
- in the terms on which it offers to admit him to the institution; or
- by refusing or deliberately omitting to accept an application for his admission to the institution.

## Have I been discriminated against whilst on a course?

It is unlawful for an education provider to discriminate against a disabled student:

- in the student services it provides or offers to provide; or
- by excluding him from the institution, either permanently or temporarily.

## What does 'discriminate' mean?

According to the DDA there are two main types of disability discrimination:

- (a) unjustified **less favourable treatment** for a reason related to a person's disability and
- (b) unjustified **failure to take reasonable steps**.

It is also unlawful for an education provider to 'victimise'.  
(See section 2.5.)

For your claim to succeed, a court will have to decide whether you have been the subject of any of these forms of discrimination.

## Less favourable treatment

An education provider discriminates against a disabled person if it treats him less favourably than other people (for a reason related to his disability) and cannot justify the treatment. (See section 2.4 for further details of justification.)

The DDA says that less favourable treatment may be unlawful in the following areas:

- the arrangements for determining admission to an institution
- the terms on which admission is offered
- refusal or deliberate omission of an application for admission
- the student services provided or offered by an institution
- exclusion.

To show you have been treated less favourably for a reason related to your disability you need to show:

- what the treatment is
- what the reason for the treatment is
- that the reason is related to your disability
- that someone to whom the reason does not apply was not/would not be treated that way (you do not need to find an actual person with whom to compare your treatment. It is enough to compare it with the treatment of a hypothetical person. The person who you compare your treatment with – whether real or hypothetical – is called a ‘comparator’).

### **For example**

Michael is a first-year student with epilepsy. He is not offered a room on campus. All other first-year students are offered rooms on campus. The university says that this is because they are worried about Michael’s health and safety if he has a seizure during the night.

- what is the treatment?  
– **no offer of a room on campus**
- what is the reason for the treatment?  
– **the university’s concerns about Michael’s seizures**
- is the reason related to Michael’s disability?  
– **yes**
- would someone to whom the reason does not apply be treated that way?  
– **no**

This is less favourable treatment for a reason relating to Michael’s disability. Unless justified, this is likely to be unlawful.

## **Failure to take reasonable steps**

Education providers also discriminate if they fail to take reasonable steps to prevent a disabled person from being placed at a substantial disadvantage. This is commonly known as the duty to make 'reasonable adjustments'. This duty applies in the following areas:

- the arrangements for determining admission to an institution
- the student services provided or offered by an institution (student services means services of any description which are provided wholly or mainly for students).

The duty to make reasonable adjustments includes a duty to provide auxiliary aids and services (for example a dictaphone or a note taker) and, from September 2005, includes a duty to remove or alter a physical feature.

### **For example**

Nafeesa is a visually impaired student who needs written materials to be in large print. A reasonable adjustment would be to provide her with large print lecture notes or make them available electronically so she is able to access them.

### **What is substantial disadvantage?**

Substantial disadvantage depends on the time, inconvenience, effort or discomfort experienced by the disabled person in comparison with that experienced by non-disabled students. Substantial means more than minor or trivial.

## What is reasonable?

In determining whether an adjustment is reasonable, education providers may take into account:

- the need to maintain academic and other prescribed standards
- the financial resources available
- grants and loans available (for example, Disabled Students' Allowances)
- the cost of the step
- the practicality of taking the step
- alternative sources of aids and services
- health and safety requirements
- the relevant interests of other people.

## 2.4 Can the education provider justify the discrimination?

Your claim will not succeed if the education provider shows that the act complained of is justified.

However, less favourable treatment cannot be justified if there were reasonable adjustments that should have been made and were not (unless those adjustments would have made no difference).

**Less favourable treatment** may be justified on the grounds of either:

- that it is necessary in order to maintain academic standards; or
- that there is a 'material and substantial' reason for it. This means the education provider must have a good reason

which is relevant to the individual circumstances (after taking into account any reasonable adjustments that may be required).

**Failure to make a reasonable adjustment** may only be justified if there is a 'material and substantial' reason for it.

### **Lack of knowledge**

Lack of knowledge as to a student's disability is a defence to a claim of discrimination. If you have not told the education provider that you are disabled, your claim is unlikely to succeed.

## **2.5 Have I been victimised?**

You can make a claim of victimisation if you have been treated less favourably because of something you have done in connection with the DDA. For example:

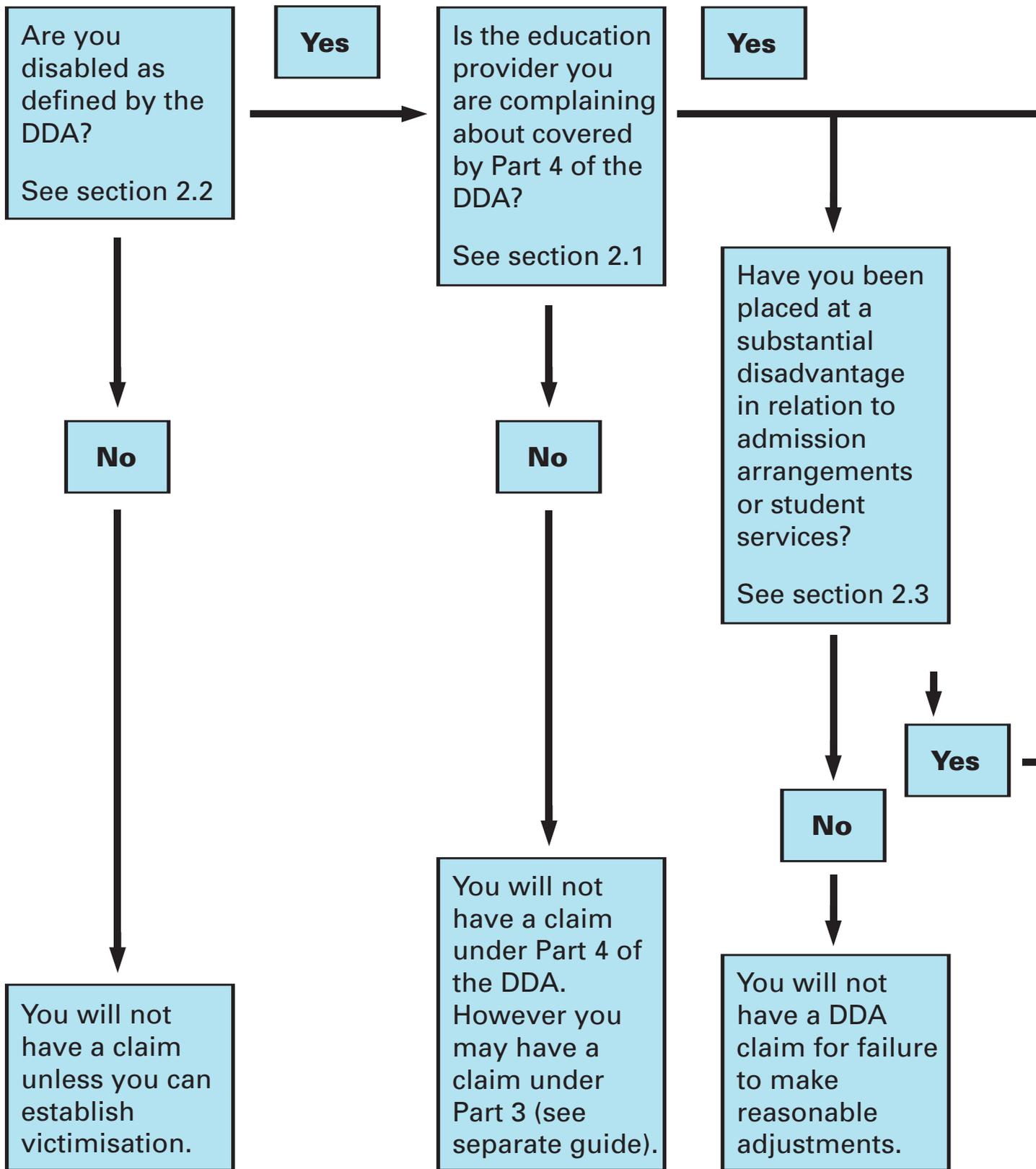
- giving evidence or information in connection with DDA proceedings
- alleging that an education provider has discriminated against a disabled person.

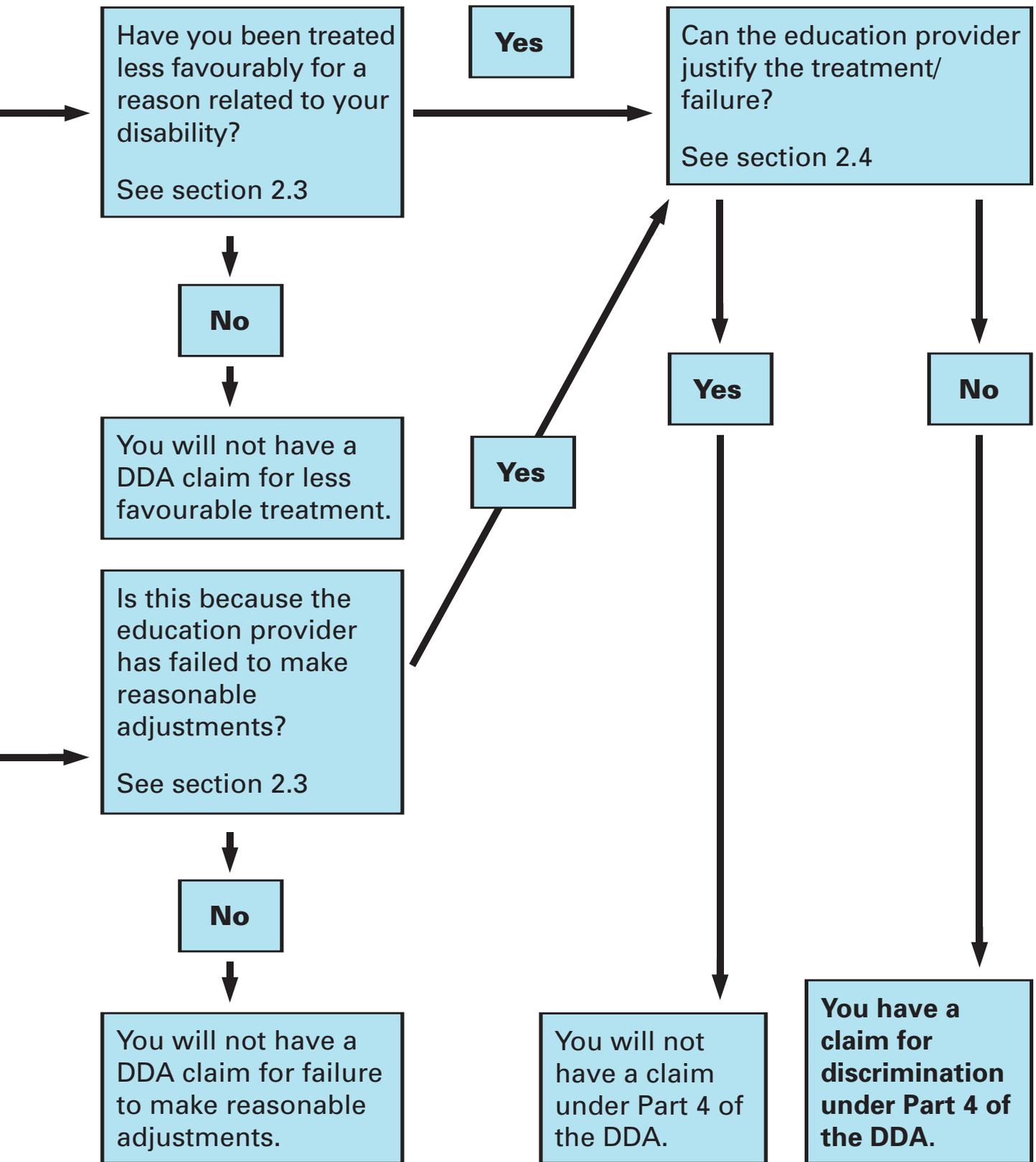
It is possible for anyone, whether disabled or not, to make a claim of victimisation under the DDA.

### **For example**

A non-disabled person acts as a witness in a complaint by a disabled student of disability discrimination by an FE college. Later, in retaliation, the non-disabled person is refused a place on a course. This is likely to be victimisation and therefore unlawful.

# Who can make a claim under Part 4 of the DDA?





# 3. How can I resolve my complaint without going to court?

If a difficulty arises during your course or during the admissions process to a course, it is a good idea to contact a member of staff to try to get things resolved quickly and informally. Useful people to contact may be:

- staff from the Disabled Students' Office
- your Head of Department, Personal Tutor or Head of Year
- the Dean of Faculty
- staff from the Academic Registrar's Office
- staff from the Principal's Office
- your Students' Union or Guild.

Students' Union staff are experienced in advising students on university and college regulations, helping resolve problems informally, and helping students make formal complaints. Whether you are at college or university, you are likely to be a member of the National Union of Students (NUS), who may be able to help if your college or university doesn't have its own union. (See section 5 – Useful contacts.)

## **Making a complaint to your education provider**

All colleges, universities and LEA's have internal complaints and appeals procedures. We strongly advise students to use these to raise disability-related complaints, as a first step, because in many cases things can get resolved this way.

An **'appeal'** is usually defined as a complaint about an academic decision such as an exam or assignment grade, or exclusion from a course because of failure to meet its academic standards.

A **'complaint'** is usually about a non-academic issue such as university housing or premises, staff attitudes, or administrative errors or decisions.

The university or college appeals and complaints procedure will tell you who to write to. You should be able to submit your complaint in alternative formats including by email, on video or audio tape, or verbally, if you need to do so for a disability-related reason.

In some cases it may be possible to negotiate with the education provider with a view to resolving the dispute. For example, the education provider may offer you money or an apology, or agree not to discriminate in the future. This can save you time and money, and spare you the uncertainty of bringing a court case. If your case concerns a failure to make a reasonable adjustment, you may be able to get the education provider to agree to the adjustment or, for example, to undertake and to act upon a disability access audit. Sample letters which may assist you are available at Appendix 1.

### **Conciliation**

If relationships have broken down between you and your education provider, conciliation can be a good way of resolving problems and getting the relationship back on track. Conciliation is also known as mediation, or arbitration. It involves both parties attending a meeting organised by a conciliator, who is independent and unbiased. The conciliator helps the parties see things from each other's point of view and tries to help everyone reach a mutually satisfactory solution to the problem.

The Disability Rights Commission may be able to refer your case to the Disability Conciliation Service (DCS); if your complaint is within the scope of the DDA and the education provider agrees to conciliation. If we are not able to offer this service, you and the education provider might want to use a different conciliation service. The national umbrella organisation for conciliation services is called Mediation UK. (See section 5 – Useful contacts.)

Ultimately, if your complaint is still unresolved, you can make a claim to the county court as long as you do so within the time limit. (See section 4 – How do I make a claim to the county court?)

# 4. How do I make a claim to the county court?

## 4.1 What should I do before I start a court claim?

Before you apply to the court, you should send a letter of complaint to the education provider. Setting out the issues in a letter can help you to reach a settlement with the education provider – and even if you do end up making a court claim, the education provider’s reply to your letter may give you information that helps your case. The court will expect you to try to resolve the dispute and avoid the need for the case to go to a hearing. The court will expect you to act reasonably. Sample letters which may assist you are available at Appendix 1.

**The time limit for applying to court is six months minus one day from the date when you were discriminated against.** You should send your complaint letter well within this deadline so that you have time to consider any response, negotiate with the education provider if appropriate, and decide whether or not you still wish to bring a claim.

Your letter should say what your disability is and describe the discrimination that you believe took place and the effect that it had on you. You may want to ask why you were treated in that way and what arrangements the education provider makes for people with a similar disability to yours. The letter should also include details of any financial loss you have suffered together with copies of any relevant documents. You should say what you want the education provider to do to resolve your complaint.

If your claim is one relating to a failure to make reasonable adjustments, you will need to explain how you have been placed at a substantial disadvantage and what reasonable adjustments the education provider could have made to prevent the substantial disadvantage.

You should ask the education provider to acknowledge receipt promptly and to give a full written reply by a specified date. One month from the date of your letter will normally be a reasonable period for a full response. You should say in your letter that you will issue a county court claim if the education provider does not reply by the date that you have given. (See sample letter at Appendix 1.)

## **4.2 Making a claim**

### **What is the time limit for making a claim?**

Claims must be started within six months minus one day from the date when you were discriminated against. This means that the last possible date for your claim to reach the court in time is **six months minus one day** from the date of the act you are complaining about. (For example, if the discriminatory acts happened on 18 January your claim must reach the court by 17 July.) Where a claim relates to an act which continues over a period, the act is treated as happening at the end of that period. However, if you are unsure of the date of discrimination you should always calculate the time limit from the earliest possible date to prevent your claim from being time-barred. If you make a claim which is out of time the court is unlikely to accept it and you will be unable to make your claim. A court may consider a claim out of time if it is just and equitable (fair) to do so. However this is extremely unusual and should not be relied upon.

### **How much will it cost to bring a claim?**

Before you start a claim, you need to think about court fees

and the cost of any legal advice or representation. If you have witnesses to support your case, you should be prepared to pay their travelling expenses and their loss of earnings for attending the hearing.

If you win your claim, you may be entitled to have some of your costs (including costs of legal representation) paid by the education provider. You also need to be aware that the court can order you to pay some or all of the education provider's costs and expenses if you lose your claim. In some cases these can be substantial and you need to consider this before starting your claim.

### ***Court fees***

You must pay court fees unless you are entitled to a fee exemption or remission. You will be exempt from paying court fees if you receive certain types of benefit, such as Income Support or income-based Job Seeker's Allowance. You will also be exempt if your income is below a certain level and you receive working tax credit that includes an element for disability or severe disability. The court may reduce the fees, or excuse you from paying them altogether, if you can show that paying them would cause you undue hardship.

You must pay a fee at the start of your case. The amount you have to pay depends on how much you are claiming. For example, in January 2005 the fee for a claim worth between £1,000 and £5,000 was £120. The current fees are available from the court office or the Court Service website [www.courtservice.gov.uk](http://www.courtservice.gov.uk)

You must also pay other fees, for example when your claim is 'allocated' or you make other applications to the courts.

Court fees are non-refundable and you will not get any money back if you decide to withdraw your claim.

To find out if you are entitled to a fee exemption or remission, ask at the court office or go to the Court Service website [www.courtservice.gov.uk](http://www.courtservice.gov.uk)

### ***Legal advice and representation***

You do not necessarily need legal advice or representation to bring a county court claim. Most disability discrimination cases are allocated to the 'small claims track', which is designed to be quick, cheap and easy to use without advice from a solicitor. If, however, your claim is allocated to one of the other 'tracks' or you are claiming more than £5,000, you may wish to take legal advice. The procedures are more complex and the cost implications more serious.

If you have a low income and your claim has a reasonable prospect of success, you may be able to get 'public funding' (previously known as legal aid) from the Community Legal Service (CLS) – to pay for a lawyer to run your case. Public funding may also cover representation at the hearing. You can get advice on whether you may be eligible for public funding from a lawyer, who can also explain the implications of this if you succeed or fail in your claim. A law firm displaying the CLS logo will be able to tell you whether or not you qualify for CLS funding. However, if your claim falls within the 'small claims track', the work that a lawyer can do using public funding is likely to be limited.

Alternatively, you may be able to get free legal advice from a law centre or Citizens' Advice Bureau (see section 5 – Useful contacts). If you have a household insurance policy it is worth checking whether this gives you help with legal costs.

### **What can I ask for?**

You can ask the court for one or more of these remedies:

- a declaration that you have been discriminated against

- compensation (known as ‘damages’) for injury to feelings as a result of the discrimination
- damages for any actual financial loss you have suffered
- interest on your damages
- an order that the education provider stops discriminating against you, known as an ‘injunction’.

### ***Compensation***

Compensation is for the money that you have lost because of the discrimination as well as money for injury to feelings. For example, if you required a reasonable adjustment which the education provider did not make and you had to pay for it yourself you could claim the amount you paid.

### ***Money for injury to feelings***

The amount the court is likely to award depends on how the discrimination has affected you. There are no set amounts, but as a general guide, compensation for injury to feelings in cases brought under the Part 4 (Post-16) provisions of the DDA is currently in the range of £1,000-£5,000. However, aggravated damages may be awarded where there has been high-handed, insulting or oppressive conduct in the discriminatory act or subsequent proceedings, and exemplary damages can be awarded where a compensatory award is not enough.

You will need to think about what you want to achieve from your claim. Some things, such as an apology, cannot be ordered by a court. If an apology is important to you, you may be able to agree the wording of one as part of the terms of a settlement but you will not be able to ask the court to order it.

### **Where and how do I make a claim?**

Claims about disability discrimination in Post-16 education are made in the county court in England and Wales. Claims in

Scotland are brought in the sheriff court. This guide deals only with claims made in England and Wales.

There are county courts throughout England and Wales. You can start a claim in any of them but the court can decide to transfer the claim to a different court at a later date. It is normally best to choose the court for the area where the education provider is based or where you live. You can find the address and phone number of the court in the phone book under 'Courts' or at [www.courtservice.gov.uk](http://www.courtservice.gov.uk). Most court offices are open between 10am and 4pm.

To start a claim you need to fill in a claim form (Form N1). An example can be found at Appendix 2. You can get a claim form free from any county court or from [www.courtservice.gov.uk](http://www.courtservice.gov.uk). The claim form comes with detailed notes on completing each section and you should read these carefully before you start to fill it in. The county court has a series of free leaflets about making a claim. Court staff can help you to fill in the claim form but they cannot give you legal advice.

### **How should I fill in the claim form?**

In the top right-hand corner of the claim form you need to put the name of the court where you are starting your claim. As you are making the claim, you are called the 'claimant' and you should put your name and address in the section headed 'Claimant'. The education provider that you are making the claim against is called the 'defendant' and you should put its details in the section headed 'Defendant(s)'.

- If your claim is against a further education or higher education institution (a college or university) you should name 'The Governing Body' of the institution as the defendant.
- If your claim is against a local education authority, you

should name the relevant local education authority as the defendant.

- If your claim is against one of the institutions set out in Appendix 3, then you should name the responsible body as set out in Appendix 3 as the defendant.

The address you should include is the main address for the education provider including the postcode. If you don't know the address you should be able to get it from literature such as a prospectus or the college/university's website or by telephoning the education provider and asking them. You do not need to tell them that you are making a claim.

In the section headed 'Brief details of claim' you need to say what type of claim you are making and what remedy you are seeking. This can be very brief but you need to make it clear that you are making a claim under the DDA. For example – 'Unlawful discrimination contrary to Part 4 of the Disability Discrimination Act 1995. Remedies sought are a declaration of discrimination and damages'.

The value of the claim will help the court decide how to deal with the claim and which 'track' to allocate it to (see section What is 'Allocation'? on page 33). You do not have to give an exact amount but you need to indicate which category the claim will fall into:

- less than £5,000
- between £5,000 and £15,000
- more than £15,000.

It is not always easy to estimate the value of a disability discrimination claim, though in practice most claims will be for less than £5,000. If you need advice to decide how much your claim is worth, a Citizens' Advice Bureau or law centre may be able to help. (See section 5 – Useful contacts.)

If you do not know what your claim is worth you should write 'I cannot say how much I expect to recover.'

In the bottom left-hand box on the claim form you should again enter the defendant's name and address. In the bottom right-hand box you only need to enter the court fee – write the amount you have to pay (see above).

On the back page of the claim form there is a box for 'Particulars of claim' (see below) and a 'Statement of truth' box. You should delete the wording which does not apply to you in the Statement of truth box, write and sign your name and provide your address in the bottom box. This is the address the court will use to contact you so only include fax or email details if you are happy for the court or defendant to contact you in that way.

### **Particulars of claim**

The claim form should be accompanied by 'Particulars of claim'. These are the full details of your claim. You should either put these in the section on the back of the form headed 'Particulars of claim', or in a separate document which you should attach to your claim form.

In either case, you should include the following details:

- Your disability and how it meets the definition of disability as set out in the DDA (see section 2.2). It might be helpful to set out the information in the checklist on page 9.
- The details of your case – explain step-by-step what has happened to you and include any key dates. If there are a number of incidents it might be helpful to include a chronology of events. Remember that although you are very familiar with what has happened and who all the people involved are, the court will not be so you need to be very clear.

- If your case concerns more than one issue, set each one out separately and explain why you think it is disability discrimination.
- Whether you are claiming that the education provider has treated you less favourably or has failed to take reasonable steps or both. If you are claiming both it may be helpful to set them out separately.
- If your claim is one for less favourable treatment, set out clearly how the less favourable treatment is for a reason related to your disability (see section 2.3).
- If your case is about reasonable adjustments, describe how you have been placed at a substantial disadvantage and what you say the education provider should have done to avoid it (see section 2.3).
- Details of any complaints made by you and how the education provider responded.
- Details of how the education provider's behaviour affected you.

This last point is important because money for injury to feelings is often the main element of the damages award in disability discrimination cases. If, for example, you were humiliated in public by the education provider's behaviour, or if you felt upset, anxious or depressed because of the way you were treated, you should say so in your particulars of claim.

If you set out your particulars of claim in a separate document, head it 'Particulars of claim'. You should include the name of the county court, your name and the education provider's name in the heading. Use numbered paragraphs and, if possible, type the document – otherwise write clearly in black ink.

At the end of the particulars of claim you must include the following statement: 'I believe that the facts stated in these particulars of claim are true.' This is known as a statement of truth and it is important that you put your signature immediately under it.

### **How do I start my claim?**

The claim is started when the court 'issues' the claim form. You must take or send it to the county court:

- one copy of the claim form (N1) for the court, one for you and one for the defendant
- one copy of the particulars of claim for the court, one for you and one for the defendant
- the fee
- a stamped self-addressed envelope if sending the claim form in by post.

The fee depends on how much financial compensation you are claiming. Current fees can be obtained from the court office or from [www.courtservice.gov.uk](http://www.courtservice.gov.uk). Cheques should be made payable to HMPG.

The court will stamp your claim form with the date of receipt, known as the 'issue date', and will give your claim a number. You should quote this number whenever you contact the court or defendant about your case.

The claim must be issued by the court within six months, less one day, from the date when you were discriminated against. If you send the documents in by post, make sure you do so in good time so that any postal delays do not mean that you miss the deadline for commencing proceedings. The court will not always issue your claim on the same day that they receive the claim form so it is important to send it well in advance.

If you have reached the last day for issuing your claim you should deliver it to the court office in person and explain that it is the last day for issuing the claim.

### **How is my claim served?**

The next stage is for the claim to be served on the defendant (this means sending it to the defendant). The court will do this for you. However if you are only issuing your claim because the limitation date is close and you need more time to prepare your particulars of claim, you can ask the court to just issue the claim and not serve it. It might also be appropriate to do this when you think that you may be able to resolve the problem through discussion or negotiation with the education provider.

If you want the court to issue the claim but not to serve it, you must make this very clear. It is best to make this request in writing at the same time as giving the court the claim form. A sample letter is provided at Appendix 1. The court will then return to you two copies of the claim form (one for you to keep and one to serve on the defendant). It is then your responsibility to serve the claim form and particulars of claim within the time limit.

The claim form must be served within four months of being issued. The particulars of claim should either be served with the claim form or within 14 days of the service of the claim form. However the particulars of claim must be served within four months of the claim being issued.

If you have particular needs – for example, you require information in large print, then you will need to let the court know of this at the outset. You can send a covering letter with your claim form to notify the court of your requirements.

## **What happens after my claim is issued?**

Unless you have asked to serve the claim yourself, the court will send a copy of the claim form to the defendant. The court will send you a 'Notice of Issue' which will show the date that the claim was issued and the date by which the defendant should reply to your claim.

The defendant must reply to your claim by filing (sending to the court) an 'acknowledgement of service' or 'defence' at court within 14 days of receiving the claim form (including the day of service). If the defendant files an acknowledgement of service, the defendant must then file a defence within 28 days of service of the claim form. The court will send you a notice that an acknowledgement of service has been filed and a copy of the defence when filed. The time limit for filing a defence can be extended by written agreement between the parties or by the court. If the defendant does not reply to your claim within the required time, you can apply for the case to be decided in your favour. The court will decide what amount the defendant should pay. It may be necessary to have a court hearing before a final decision is made.

When the defence is filed, the court will normally send you and the defendant an 'allocation questionnaire' to complete. You should complete the allocation questionnaire and return it to the court within the time specified on the form with the appropriate fee. The allocation questionnaire asks you a series of questions – for example, whether you want extra time to try to settle the claim, whether you want the hearing to be held at a particular court, and what witnesses you intend to call to give evidence at the hearing. It also asks you to say which track you think is the most suitable for your claim. Your view will be taken into account but this is a matter for the court to decide.

The questionnaire comes with a set of detailed notes and you should read these carefully before you start to fill it in. (Note: when filling in section C, 'pre-action protocols', there is currently no pre-action protocol that applies to disability discrimination claims.)

After you have returned your allocation questionnaire a judge will allocate your claim to a track. You will be sent a notice telling you which track your claim has been allocated to and what you must do to prepare your case for trial or final hearing (known as 'directions').

### **What is 'Allocation'?**

Your case will be allocated to one of three tracks – the 'small claims track', the 'fast track' or the 'multi-track'. Which track your claim is allocated to will depend on its value and on other matters such as the legal and factual complexity of the claim, the remedy sought and the views expressed by the parties and their circumstances. As a general rule, cases are allocated as follows:

- the 'small claims track' is the normal track for claims worth no more than £5,000
- the 'fast track' is the normal track for claims between £5,000 and £15,000 where the trial is not likely to last for more than one day
- the 'multi-track' is for all other claims.

In practice, many disability discrimination claims are allocated to the small claims track on the basis that they are likely to be worth £5,000 or less and to be relatively straightforward. But this is not always the case and a disability discrimination claim worth less than £5,000 might be dealt with under the fast track or multi-track if it involves complex legal issues. If a claim is for more than £5,000, the claim can still be dealt with under the small claims track if the parties

agree and the judge approves. However, in those cases the winning party will usually be able to recover some of their costs, including legal costs, from the losing party.

This booklet is intended to assist you with making a claim through the small claims track. The procedures for the fast and multi-tracks are more complicated and the costs implications can be very serious. If your claim is allocated to either the fast or multi-track, you should seek advice from a solicitor, law centre or Citizens' Advice Bureau.

### **The small claims track**

The small claims track is designed to allow claimants to conduct their own cases without a solicitor's help in a relatively informal setting. It is generally faster, cheaper and easier to use than the fast track or the multi-track.

The advantages of the small claims track are that:

- Costs are not usually payable if your claim is dealt with in the small claims track, although this means that you will not get the cost of any legal representation back if you win the case. It also means that if you lose, you will not usually have to pay the defendant's costs but you will still have to pay your own costs.
- It is usually much more informal than the other tracks.

The disadvantages are that:

- You will not generally be able to get public funding for a claim in the small claims track.
- You will not get any costs of representation back if you win your claim.

If you win your case in the small claims track, the court will usually order the defendant to reimburse you for any court

fees that you have paid. The defendant will usually also have to pay towards the travelling and other expenses of you and your witnesses to cover attendance at the hearing.

If you have paid any legal costs, these will generally not be recoverable. An exception to this is where you and the defendant agreed that the claim should be dealt with under the small claims track, even though it was worth more than £5,000, and the court consented. In this case you can normally recover some of your legal costs from the defendant, as well as the other costs referred to above.

### **What happens before the hearing?**

If your claim is allocated to the small claims track, the court will send you a notice of allocation to the small claims track (Form N157). This will tell you what you must do to prepare for the final hearing. For example, you may be told to send copies of all the documents you intend to use to prove your case to the court and the defendant no later than 14 days before the hearing is due to take place. If you do not do this, you may lose the right to use those documents as your evidence.

The notice will also usually tell you the time, date and place when your hearing will take place and how much time has been allowed for it.

The judge may decide to hold a preliminary hearing. This may happen if, for example, the judge feels that you or the defendant have no real prospect of winning or defending the claim and wants to deal with the claim as soon as possible.

The judge could propose that your claim be dealt with without a hearing. If you or the defendant object to this, there will be a hearing.

## **Witnesses**

If you and the defendant are saying different things about what happened, and you have a witness or witnesses who can support you, it is important that they give evidence at the hearing. Your witness could be a friend or relative who was with you when you were discriminated against.

Occasionally, expert evidence will be needed but you will need the court's permission for this if your case is allocated to the small claims track. Expert evidence might be needed, for example, if there is a dispute about whether or not you are disabled.

The court will let you know in advance whether witness evidence is to be given in writing (that is, in a witness statement), orally at the hearing, or both. The court will usually send you 'directions' telling you the date by which you and the education provider should exchange copies of your witness statements.

If the court asks you to provide witness statements, you should ask your witnesses to give you signed statements explaining in their own words who they are, how they know you and what they saw or heard. You will also need to prepare a statement containing your own evidence.

Witness statements (including your own) should be typed if possible, and divided into numbered paragraphs. A statement should contain the witness's full name, address and occupation, and should say whether or not the information it contains is within the witness's own knowledge. You should also include the name of the county court, your name and the education provider's name in the heading.

In your own witness statement, you will need to set out everything which is relevant to your case and the issues to be

decided. You will need to begin by describing your disability to establish that you fall within the definition of a disabled person. You will then need to describe the alleged incident of discrimination: how it occurred and how you were affected.

At the end of the statement the witness must include the following statement: 'I believe that the facts stated in this witness statement are true.' This is known as a statement of truth and must be followed by the witness's signature and date.

If you are calling witnesses, it is up to you to tell them when and where the hearing will take place.

### **How do I prepare for the hearing?**

Once you receive notice of the hearing date, you should make sure that all your documents are in order and work out what you want to say at the hearing.

You can take someone with you to the hearing for moral support or a lawyer or lay representative to speak for you. A lay representative can be anyone you choose. This could be a friend, relative or advice worker. You will have to pay the fee of any representative yourself, even if you win the case.

It is a good idea to visit the relevant county court beforehand to make sure you know where you are going. You could ask the court staff if there are any cases that you could watch to try to give you an idea of what might happen on the day. You should remember that each case is different and will be dealt with in a slightly different way.

Make sure you tell the court if you have any access needs so that the case can be listed in an accessible court and any necessary adjustments put in place.

You will be given a start time for your hearing, and you should arrive at the court with plenty of time to spare. You should report to the receptionist or the court usher, who will tell you where to wait until your case is ready to be heard. The court will do their best to keep to the start time that you have been given but there may sometimes be a delay.

### **What happens at the hearing?**

Small claims hearings will generally be 'public' hearings, which members of the public can sit in on. The judge decides how to conduct the hearing. Normally, the judge will first want to hear what you have to say and then hear the defendant's reply. The judge may ask you questions and the defendant will also be given the opportunity to question you and your witnesses. Remember to speak clearly and slowly and direct your answers to the judge. The judge may also question the defendant and any witnesses. You will be given a chance to ask the defendant or their witnesses questions or you can ask the judge to ask questions for you. Ask questions which will support your case and do not ask about things that are not relevant to your claim. You should take a note of the answers. You and any witnesses will normally be asked to swear (take an oath on a bible or other holy book) that the evidence you will give is true. If you prefer, you can promise to tell the truth (known as 'affirming').

At the end of the hearing, you should be given an opportunity to make submissions about the case and the law. You will need to explain to the court:

- the legal basis for your claim (why you think the education provider has breached the DDA)
- how this claim is supported by the evidence – your own evidence and that of any witnesses you have
- what you want out of the case – how much compensation you think that the court should award.

It would also help if you can say how the Code of Practice approaches the issue, and refer to any relevant parts of the Code.

At the end of the hearing the judge will tell you the decision reached (the judgment) and give brief reasons for this. You should make a note of the decision and reasons in case you later wish to seek advice on whether you could appeal against the decision. If the court has mechanically recorded the decision, you can get a copy of the transcript by paying the transcriber's fee. You are not allowed to make your own recording. After the hearing, the court will send you an order, or judgment, setting out the decision.

### ***The fast track***

If your case is allocated to the fast track, you will be sent form N154. This will tell you what you have to do to prepare for the trial ('directions'), give you the date to return the completed listing questionnaire (Form N170) to the court, and give you the trial date or trial period.

### ***The multi-track***

If your claim is allocated to this track, the court will send you a notice of allocation to the multi-track (Form N155). There is no standard procedure for multi-track cases and each claim is managed by a judge according to its individual needs. The judge is likely to give directions about disclosure and inspection of documents and exchange of witness statements. The judge may also decide to hold one or more 'case management conferences' which are meetings of all the parties and the judge to review the progress of the case and to decide what further steps need to be taken to prepare the case for trial.

If your case is allocated to the multi- or fast track, you should seek legal advice as this booklet is not intended to assist with these types of claims.

## **What do I do if I want to appeal?**

You can appeal against the decision only in very limited circumstances. You must have proper grounds for appeal. It is not enough simply to say that you think the judge made the wrong decision. You will need to show that there has been a serious irregularity in the proceedings or that the judge got the law wrong.

The time limit for appealing is 14 days from the date you receive the order so you must act quickly. If you are unsuccessful in your appeal, you may have to pay the defendant's costs.

If you are considering an appeal you should seek legal advice as soon as possible.

## **What if I win and the defendant does not pay?**

The court will not automatically ensure that the defendant pays you any compensation or costs it awards you. If there is a problem, you will need to ask the court to take more action. Court fees are payable for enforcement action but you will be reimbursed by the defendant if you are successful in getting the money you are owed. You can get leaflets on enforcing your judgment from the county court. You can also get advice from a law firm, law centre or Citizens' Advice Bureau.

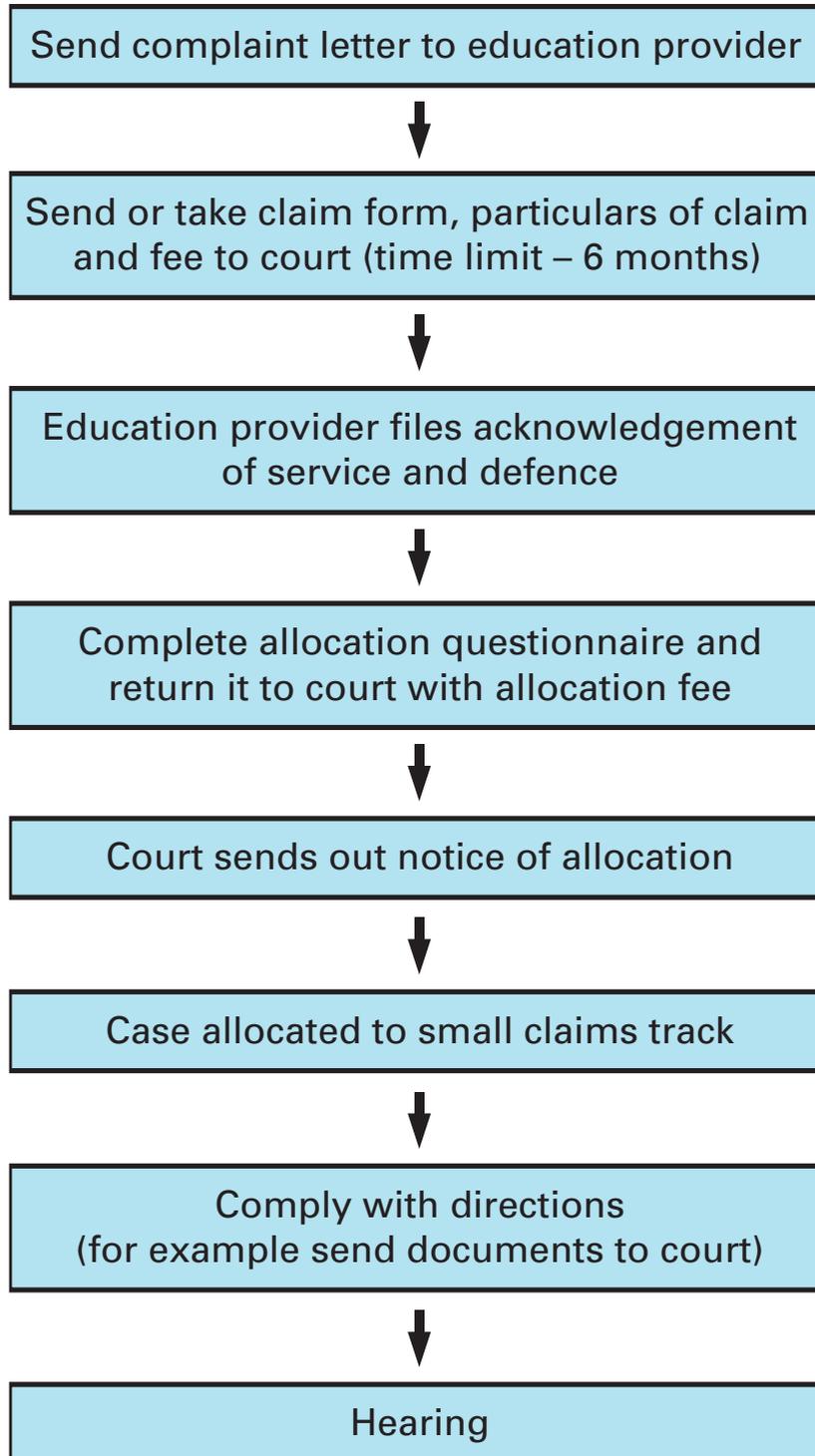
## **Settlements**

You can agree to settle your case with the defendant at any time before the hearing. But if you reach an agreement with the defendant to settle your claim, you cannot then change your mind and ask the court to hear your claim. If the defendant does not pay you in accordance with the settlement agreement, you can bring a separate claim in the county court for payment of the sum agreed, based on that contract.

If you discuss the possibility of settlement with a defendant on a 'without prejudice' basis, neither you nor the defendant can tell the court about these discussions if you do not reach an agreement.

Before reaching a settlement you need to consider how much money you would settle for. This depends on how good your chances are of winning the case; financial losses you have incurred or are likely to incur and how much you can expect for hurt feelings. You may also be prepared to settle on other terms, such as an agreed apology from the education provider or an agreement to make a reasonable adjustment.

## Making a claim in the small claims track



# 5. Useful contacts

## **British Council of Disabled People (BCODP)**

[www.bcodp.org.uk](http://www.bcodp.org.uk)

National umbrella organisation with 130 full member organisations of disabled people.

Telephone: 01332 295 551 (minicom 01332 295 581)

## **Community Legal Service**

[www.clsdirect.org.uk](http://www.clsdirect.org.uk)

The Community Legal Service is run by the Legal Services Commission. It operates a scheme for funding civil cases (formerly known as legal aid) and can help you to find a solicitor or advice centre in your area.

Telephone: 0845 608 1122 (minicom: 0845 609 6677) Directory Service

Telephone: 0845 345 4345 CLS Direct telephone advice scheme for education

## **County courts**

[www.courtservice.gov.uk](http://www.courtservice.gov.uk)

County courts are listed under 'Courts' in the telephone book. Your local county court can give you leaflets about bringing a claim. Court staff can help you to fill in forms and give you advice about procedures but they cannot give you legal advice.

Court forms, guidance and court addresses are also available from the website.

## **Court Service Disability Helpline**

If you need help to bring a claim or attend a court hearing because of your disability, your first point of contact is the Customer Service Officer at the court that is dealing with your claim. If you need further information, you can contact the Court Service Disability Helpline.

Telephone: 0800 358 3506, 9am to 5pm, Monday to Friday  
(minicom 0191 478 1476)

### **DIAL UK Disabled Information and Advice Line**

[www.dialuk.org.uk](http://www.dialuk.org.uk)

DIAL UK is the national organisation for the DIAL network, giving services to disability information and advice providers. You can find your local DIAL by calling the national office.

Telephone: 01302 310 123 (textphone 01302 310 123; please use voice announcer)

### **Disability Law Service**

The Disability Law Service offers free legal advice to people with disabilities.

Telephone: 020 7791 9800 (minicom 020 7791 9801)

### **Disability Wales**

[www.dwac.demon.co.uk](http://www.dwac.demon.co.uk)

The umbrella organisation for disability groups in Wales.

Telephone: 029 2088 7325

Fax: 029 2088 8702

Email: [info@dwac.demon.co.uk](mailto:info@dwac.demon.co.uk)

### **Law centres**

Law centres give free advice and assistance on employment law and other areas of law. You can find out where your nearest law centre is by calling the Law Centres Federation.

Telephone: 020 7387 8570

### **Mediation UK**

[www.mediationuk.org.uk](http://www.mediationuk.org.uk)

The national umbrella organisation for conciliation services.

Telephone: 0117 904 6661

Fax: 0117 904 3331

Email: [enquiry@mediationuk.org.uk](mailto:enquiry@mediationuk.org.uk)

**National Association of Citizens Advice Bureaux (NACAB)**

[www.nacab.org.uk](http://www.nacab.org.uk)

The Citizens Advice Bureau can give advice and assistance on DDA cases. You can contact the Citizens Advice Bureau head office for details of your nearest bureau (CAB).

Telephone: 020 7833 2181

**Royal National Institute of the Blind (RNIB)**

[www.rnib.org.uk](http://www.rnib.org.uk)

Telephone: 020 7388 1266

Telephone: 029 2066 8606 (Wales)

Typetalk: 0800 515152

Fax: 020 7388 2034

Email: [helpline@rnib.org.uk](mailto:helpline@rnib.org.uk)

Helpline Telephone: 08457 669 999, open weekdays 9am to 5pm

**Royal National Institute for the Deaf (RNID)**

[www.rnid.org.uk](http://www.rnid.org.uk)

Telephone: 0808 808 0123

Textphone: 0808 808 9000

**SKILL: National Bureau for Students with Disabilities**

[www.skill.org.uk](http://www.skill.org.uk)

Skill is a national charity promoting opportunities for young people and adults with any kind of disability in Post-16 education, training and employment across the UK.

Minicom: 0800 068 2422

Fax: 020 7450 0650

Email: [information@skill.org.uk](mailto:information@skill.org.uk)

Free information line: 0800 328 5050

Telephone Helpline: 020 7450 0620 (main office)

open: Tuesday 11:30am to 1:30pm and Thursday 1:30pm to 3:30pm

**The Stationery Office**

[www.tso.co.uk](http://www.tso.co.uk)

The Stationery Office provides copies of the Disability Discrimination Act, the Guidance, and the Civil Procedure Rules (CPR), which govern county court procedure.

Telephone: 020 7873 0011

Copies of the CPR and most court forms are also available from [www.dca.gov.uk/civil/procrules\\_fin/menus/rules.htm](http://www.dca.gov.uk/civil/procrules_fin/menus/rules.htm)

# 6. Glossary

**Acknowledgement of service:** Defendant's reply to claim form (Form N9).

**Allocation questionnaire:** Issued to all parties after a defence has been filed; it helps the court decide the most appropriate track for your claim (Form N150).

**Claim:** Proceedings issued in the county court using a claim form (Form N1).

**Claimant:** The person issuing the claim – you.

**Code of Practice:** The Disability Discrimination Act Code of Practice for providers of Post-16 education and related services explains the effect of the DDA. It also tells education providers how they should approach their duties under the Act. Although it isn't 'the law', the Code has to be taken into account by courts in DDA cases where relevant. The Code is produced by the DRC and can be ordered from the DRC Helpline or downloaded from the DRC's website.

**County court:** County courts deal with DDA Part 4 Post-16 claims.

**Damages:** An amount of money claimed as compensation for actual loss or injury to feelings arising from unlawful discrimination.

**DDA:** The Disability Discrimination Act 1995.

**Declaration:** Court order setting out the rights of a party in the form of a statement.

**Defendant:** The person/organisation the claim is made against.

**Directions:** Court instructions as to what to do to prepare for the trial.

**Fast track:** The path that defended claims of more than £5,000 but not more than £15,000 are allocated to.

**Fee:** Monies payable on issue of a claim and subsequent process.

**Multi-track:** The path that defended claims over £15,000 are allocated to.

**Notice of issue:** Notice sent by the court to the claimant giving notification of the case number allocated to their action and details of fees paid. Confirms date of service (Form N205B).

**Particulars of claim:** Details relevant to a claim.

**Service:** Delivery by post or personal service of the claim, or other court documents.

**Small claims track:** The path that defended claims of no more than £5,000 (and personal injury claims of no more than £1,000) are allocated to.

**Without prejudice:** Discussions and correspondence between the parties which are genuinely aimed at resolving the claim are 'without prejudice'. This means that they are private and should not be used or referred to by the parties in court.

# Appendix 1

- 1 Letter requesting reasonable adjustments
- 2 Letter requesting justification for failure to make reasonable adjustments
- 3 Letter of complaint about failure to make reasonable adjustments
- 4 Letter requesting justification for less favourable treatment in relation to admissions
- 5 Letter requesting justification for less favourable treatment in relation to student services
- 6 Letter requesting justification for less favourable treatment by exclusion
- 7 Letter of complaint about less favourable treatment
- 8 Letter before making a claim
- 9 Letter requesting that claim is issued but not served

## 1 LETTER REQUESTING REASONABLE ADJUSTMENTS

Dear Course leader/Head of service

### **Name, course**

I am writing as a student at your college/university who has \_\_\_\_\_ (disability). This affects me in the following ways:

- 
- 
- 

I consider that I meet the definition of disability in the Disability Discrimination Act 1995.

Part 4 of the Disability Discrimination Act 1995 says that the responsible body of an education institution must make reasonable adjustments to ensure that disabled people are not placed at a substantial disadvantage in comparison with people who are not disabled.

I am at a substantial disadvantage in the following ways:

- 
- 

I think it is reasonable for the responsible body to make the following adjustment(s) to ensure that I am not placed at a substantial disadvantage:

- 
- 

To avoid a potential disability discrimination claim I would like the college/university to make these reasonable adjustment(s) immediately.

Yours faithfully

## 2 LETTER REQUESTING JUSTIFICATION FOR FAILURE TO MAKE REASONABLE ADJUSTMENTS

Dear Sir/Madam

### **Name, course**

I am writing as a student at your college/university, who has \_\_\_\_\_ (disability). This affects me in the following ways:

- 
- 
- 

I consider that I meet the definition of disability in the Disability Discrimination Act 1995.

Part 4 of the Disability Discrimination Act 1995 says a responsible body of an educational institution must make reasonable adjustments to ensure that disabled students are not placed at a substantial disadvantage in comparison with students who are not disabled.

I wrote to you on (insert date) asking you to make reasonable adjustments to prevent me from being placed at a substantial disadvantage. I enclose a copy of that letter. (Also provide details of any reply or conversations you have had with staff about reasonable steps.)

These reasonable steps have not been made and I continue to be placed at a substantial disadvantage.

Please could you tell me why the college/university has not made the reasonable steps that I have asked for. Please could you reply within 14 days of the date of this letter.

Yours faithfully

### **3 LETTER OF COMPLAINT ABOUT FAILURE TO MAKE REASONABLE ADJUSTMENTS**

Dear Sir/Madam

**Name, course**

**Complaint of disability discrimination**

I am a disabled student/person.

I wrote to you on (insert date) requesting that the college/university make reasonable adjustments to prevent me being placed at a substantial disadvantage. I wrote again on (insert date) asking why the reasonable adjustments had not been made. I have attached a copy of those letters.

This matter has not been resolved and I think the college/university is discriminating against me as a disabled person.

My complaint is that the college/university has failed to make reasonable adjustments to prevent me being placed at a substantial disadvantage in comparison with students who are not disabled. I do not think that the college/university can justify this failure.

I would be grateful if my complaint could be investigated and I could receive a response within 28 days.

Yours faithfully

#### **4 LETTER REQUESTING JUSTIFICATION FOR LESS FAVOURABLE TREATMENT IN RELATION TO ADMISSIONS**

Dear Sir/Madam

**Name, course**

I am writing as a student at your college/university, who has \_\_\_\_\_ (disability). This affects me in the following ways:

- 
- 
- 

I consider that I meet the definition of disability in the Disability Discrimination Act 1995.

Part 4 of the Disability Discrimination Act 1995 says an education provider discriminates against a disabled person if, for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply, and it cannot show that the treatment is justified.

I believe that you treated me less favourably on (insert date), by refusing me a place on the above course/ by placing the following conditions on my admission to the college/university (add details of any conditions).

I believe the reason for the refusal/conditions is \_\_\_\_\_

This reason relates to my disability.

Please could you tell me why the college/university has treated me in this way. Please could you reply within 14 days of the date of this letter.

Yours faithfully

## 5 LETTER REQUESTING JUSTIFICATION FOR LESS FAVOURABLE TREATMENT IN RELATION TO STUDENT SERVICES

Dear Sir/Madam

### **Name, course**

I am writing as a student at your college/university, who has \_\_\_\_\_ (disability). This affects me in the following ways:

- 
- 
- 

I consider that I meet the definition of disability in the Disability Discrimination Act 1995.

Part 4 of the Disability Discrimination Act 1995 says an education provider discriminates against a disabled person if, for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply, and it cannot show that the treatment is justified.

I believe that you may have treated me less favourably on (insert date), by \_\_\_\_\_

I believe the reason for this treatment is \_\_\_\_\_

This reason relates to my disability. I think this may be disability discrimination.

Please could you tell me why the college/university has treated me in this way. Please could you reply within 14 days of the date of this letter.

Yours faithfully

## 6 LETTER REQUESTING JUSTIFICATION FOR LESS FAVOURABLE TREATMENT BY EXCLUSION

Dear Sir/Madam

### **Name, course**

I am writing as a student at your college/university, who has \_\_\_\_\_ (disability). This affects me in the following ways:

- 
- 
- 

I consider that I meet the definition of disability in the Disability Discrimination Act 1995.

Part 4 of the Disability Discrimination Act 1995 says an education provider discriminates against a disabled person if, for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply, and it cannot show that the treatment is justified.

I believe that you may have treated me less favourably on (insert date ), by excluding me.

I believe the reason I was excluded was \_\_\_\_\_. This reason relates to my disability. I think this may be disability discrimination.

Please could you tell me why the college/university has treated me in this way. Please could you reply within 14 days of the date of this letter.

Yours faithfully

## **7 LETTER OF COMPLAINT ABOUT LESS FAVOURABLE TREATMENT**

Dear Sir/Madam

**Name, course**

**Complaint of disability discrimination**

I am a disabled student/person.

I wrote to you on (insert date) requesting that the college/university provide an explanation for the less favourable treatment which I have received for a reason related to my disability. I have attached a copy of that letter.

This matter has not been resolved and I think the college/university is discriminating against me as a disabled person.

My complaint is that the college/university is treating me less favourably for a reason related to my disability. The treatment I am complaining of is \_\_\_\_\_. The reason for this treatment is \_\_\_\_\_. This reason relates to my disability. I do not think the college/university can justify this less favourable treatment.

I would be grateful if my complaint could be investigated and I could receive a response within 28 days.

Yours faithfully

## 8 LETTER BEFORE MAKING A CLAIM

Dear Sir/Madam

**Name, course**

**My complaint of disability discrimination**

I wrote to you on (insert date) about my complaint of disability discrimination. I have attached a copy of that letter.

I am writing to tell you that I intend to make a claim of disability discrimination to the county court within the next 14 days. This is because the deadline for making my claim is approaching and I wish to protect my legal position.

I would still like to resolve my complaint without the need for a court hearing. My complaint could be resolved if the college/university:

- makes the reasonable adjustments I requested in my letter of (insert date)
- agrees not to treat me less favourably in the future
- agrees with me a way forward to prevent these problems happening again
- provides me with a small injury to feelings payment
- provides me with compensation for the additional costs which I have incurred as a result of the college/university's discrimination. Details of these costs are \_\_\_\_\_

I would like to talk to you so that we can try to reach a satisfactory resolution.

Yours faithfully

## **9 LETTER REQUESTING THAT CLAIM IS ISSUED BUT NOT SERVED**

Dear Clerk to the Court

### **Claim form**

I enclose an original signed claim form and two copies. I would be grateful if this claim could be issued but NOT served. I wish to serve the claim myself.

I also enclose the necessary court fee and a stamped addressed envelope for the issued claim forms to be returned to me.

Yours faithfully

# Appendix 2



## Claim Form

[Click here to clear your data after printing](#)

In the

*for court use only*

Claim No.

Issue date

Claimant

SEAL

Defendant(s)

Brief details of claim

Value

Defendant's  
name and  
address

£

Amount claimed

Court fee

Solicitor's costs

Total amount

Claim No.

Does, or will, your claim include any issues under the Human Rights Act 1998?  Yes  No

Particulars of Claim (attached)(to follow)

Statement of Truth

\*(I believe)(The Claimant believes) that the facts stated in these particulars of claim are true.

\*I am duly authorised by the claimant to sign this statement

Full name \_\_\_\_\_

Name of claimant's solicitor's firm \_\_\_\_\_

signed \_\_\_\_\_ position or office held \_\_\_\_\_

\*(Claimant)(Litigation friend)(Claimant's solicitor) (if signing on behalf of firm or company)

*\*delete as appropriate*

Claimant's or claimant's solicitor's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.

# Appendix 3

<b>Institution Name</b>	<b>Responsible Body</b>
Arden College	Craegmore Healthcare Company Ltd
Beaumont College	SCOPE
Belford College	Board of Governors
Bridge College	Board of Governors
Broughton House College	The Hesley Group
Coleg Elidyr	Board of Governors
The David Lewis College of Further and Continuing Education	Board of Governors
Derby College for Deaf People	Board of Governors
Derwen College	Board of Governors
Dilston College of Further Education	MENCAP
Doncaster College for the Deaf	Board of Governors
Dorton College of Further Education	Board of Governors
E.S.P.A. Colleges (Ashleigh)	Board of Governors
E.S.P.A. Colleges (South Hill)	Board of Governors
E.S.P.A. Colleges (Tasker)	Board of Governors
Fairfield Opportunity Farm	Fairfield Opportunity Farm (Dilton) Ltd
Fortune Centre of Riding Therapy	Board of Trustees
The Glasshouse Project	Ruskin Mill Educational Trust Ltd
Green Laund Further Education Centre	Honormead Schools Ltd
Henshaws Society for the Blind – Harrogate	Board of Trustees
Hereward College	Board of Governors
Hesley Village College	The Hesley Group
Hinwick Hall College of Further Education	Board of Governors
Homefield College	Homefield College Ltd
Hope Lodge School	Hampshire Autistic Society

The Interact Centre	The Interact Centre
Ivers College	Iver House Ltd
Kisharon Further Education and Vocational Training Unit	Board of Governors
Landmarks	Landmarks Andertons Liversidge & Company Ltd
Langdon College	Board of Governors
The Leap Education Service	The National Autistic Society
Lindeth College of Further Education	Craegmore Healthcare Company Ltd
Linkage College – Sampson Campus	The Linkage Community Trust Ltd
Linkage College – Toynton Hall Campus	The Linkage Community Trust Ltd
Linkage College – Weelsby Hall Campus	The Linkage Community Trust Ltd
Loppinton House Further Education Unit and Adult Centre	Loppington House Ltd
Lufton Manor College	MENCAP
Meldreth Manor	SCOPE
The Minstead Training Project	Minstead Training Project Ltd
The Mount Camphill Community	The Mount Camphill Community Ltd
Nash College of Further Education Centre	The Shaftsbury Society
National Star Centre College of Further Education	Board of Governors
Newbattle Abbey College	Board of Trustees
Oakwood Court	Education and Care (Devon) Ltd
Orchard Hill College of Further Education	Board of Governors
Pengwern College	MENCAP
Pennine Camphill Community	Board of Governors
Portland College	Board of Governors

Queen Alexandra College	Board of Governors
Queen Elizabeth's Foundation Brain Injury Centre	Board of Governors
Queen Elizabeth's Foundation Development Centre	Board of Governors
RNIB Condoover Hall Further Education Centre	RNIB
RNIB New College Worcester	RNIB
RNIB Redhill College	RNIB
RNIB Vocational College	RNIB
Royal National College for the Blind	RNIB
The Royal Schools for the Deaf (Manchester)	Board of Governors
Royal West of England School for the Deaf	Board of Governors
Ruskin Mill Further Education Unit Educational Trust Ltd	Ruskin Mill
Sabhal Mòr Ostaig	Board of Trustees
Sense East, Peterborough Resource Centre	Sense, The National Deaf, Blind and Rubella Association
St Elizabeth's Centre	Board of Governors
St Loyal's College	Board of Governors
St Piers	Board of Governors
Stanbridge Earls School	Board of Governors
Strathmore College	The Strathmore College Ltd
Thornbeck College	Board of Governors
Treloar College	Board of Governors
The West of England College	Board of Governors
Westgate College	Board of Governors
Whitegates Further Education Unit	The Nottingham Regional Society for Autistic Children and Adults
William Morris House	William Morris (Camphill) Community Ltd

# Appendix 4

## **Key education (Post-16) provisions of the Disability Discrimination Act 1995 (as amended by the Special Educational Needs and Disability Act 2001)**

Part 4, sections 28R to 28X of the DDA relate to Post-16 education. These sections are reproduced here. The full (unamended) text of the DDA 1995 can be found at [www.hmso.gov.uk/acts/acts1995/acts1995/1995050.htm](http://www.hmso.gov.uk/acts/acts1995/acts1995/1995050.htm)  
The full text of SENDA can be found at [www.hmso.gov.uk/acts/acts2001/20010010.htm](http://www.hmso.gov.uk/acts/acts2001/20010010.htm)

### FURTHER AND HIGHER EDUCATION

#### Duties of responsible bodies

#### **28R Discrimination against disabled students and prospective students**

- (1) It is unlawful for the body responsible for an educational institution to discriminate against a disabled person –
  - (a) in the arrangements it makes for determining admissions to the institution
  - (b) in the terms on which it offers to admit him to the institution; or
  - (c) by refusing or deliberately omitting to accept an application for his admission to the institution.
- (2) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student in the student services it provides, or offers to provide.
- (3) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student by excluding him from the institution, whether permanently or temporarily.

- (4) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
- (5) The body responsible for an educational institution is to be determined in accordance with Schedule 4B, and in the remaining provisions of this Chapter is referred to as the 'responsible body'.
- (6) 'Educational institution', in relation to England and Wales, means an institution –
  - (a) within the higher education sector
  - (b) within the further education sector; or
  - (c) designated in an order made by the Secretary of State.
- (7) 'Educational institution', in relation to Scotland, means –
  - (a) an institution within the higher education sector (within the meaning of section 56(2) of the Further and Higher Education (Scotland) Act 1992)
  - (b) a college of further education with a board of management within the meaning of section 36 of that Act
  - (c) a central institution within the meaning of section 135 of the Education (Scotland) Act 1980
  - (d) a college of further education maintained by an education authority in the exercise of their further education functions in providing courses of further education within the meaning of section 1(5)(b)(ii) of that Act
  - (e) an institution designated in an order made by the Secretary of State.
- (8) Subsection (6) is to be read with section 91 of the Further and Higher Education Act 1992.
- (9) The Secretary of State may not make an order under subsection (6)(c) or (7)(e) unless he is satisfied that

the institution concerned is wholly or partly funded from public funds.

- (10) Before making an order under subsection (7)(e), the Secretary of State must consult the Scottish Ministers.
- (11) 'Student services' means services of any description which are provided wholly or mainly for students.
- (12) Regulations may make provision as to services which are, or are not, to be regarded for the purposes of subsection (2) as 'student services.'

### **28S Meaning of 'discrimination'**

- (1) For the purposes of section 28R, a responsible body discriminates against a disabled person if –
  - (a) for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
  - (b) it cannot show that the treatment in question is justified.
- (2) For the purposes of section 28R, a responsible body also discriminates against a disabled person if –
  - (a) it fails, to his detriment, to comply with section 28T; and
  - (b) it cannot show that its failure to comply is justified.
- (3) In relation to a failure to take a particular step, a responsible body does not discriminate against a person if it shows –
  - (a) that, at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and
  - (b) that its failure to take the step was attributable to that lack of knowledge.

- (4) The taking of a particular step by a responsible body in relation to a person does not amount to less favourable treatment if it shows that at the time in question it did not know, and could not reasonably have been expected to know, that he was disabled.
- (5) Subsections (6) to (9) apply in determining whether, for the purposes of this section –
  - (a) less favourable treatment of a person, or
  - (b) failure to comply with section 28T, is justified.
- (6) Less favourable treatment of a person is justified if it is necessary in order to maintain –
  - (a) academic standards; or
  - (b) standards of any other prescribed kind.
- (7) Less favourable treatment is also justified if –
  - (a) it is of a prescribed kind
  - (b) it occurs in prescribed circumstances; or
  - (c) it is of a prescribed kind and it occurs in prescribed circumstances.
- (8) Otherwise less favourable treatment, or a failure to comply with section 28T, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.
- (9) If, in a case falling within subsection (1) –
  - (a) the responsible body is under a duty imposed by section 28T in relation to the disabled person, but
  - (b) fails without justification to comply with that duty, its treatment of that person cannot be justified under subsection (8) unless that treatment would have been justified even if it had complied with that duty.

## **28T Disabled students not to be substantially disadvantaged**

- (1) The responsible body for an educational institution must take such steps as it is reasonable for it to have to take to ensure that –
  - (a) in relation to the arrangements it makes for determining admissions to the institution, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
  - (b) in relation to student services provided for, or offered to, students by it, disabled students are not placed at a substantial disadvantage in comparison with students who are not disabled.
- (2) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under subsection (1), a responsible body must have regard to any relevant provisions of a code of practice issued under section 53A.
- (3) Subsection (4) applies if a person has made a confidentiality request of which a responsible body is aware.
- (4) In determining whether it is reasonable for the responsible body to have to take a particular step in relation to that person in order to comply with its duty under subsection (1), regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.
- (5) ‘Confidentiality request’ means a request made by a disabled person, which asks for the nature, or asks for the existence, of his disability to be treated as confidential.
- (6) This section imposes duties only for the purpose of

determining whether a responsible body has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

### **28U Further education etc. provided by local education authorities and schools**

- (1) Part 1 of Schedule 4C modifies this Chapter for the purpose of its application in relation to –
  - (a) higher education secured by a local education authority
  - (b) further education –
    - (i) secured by a local education authority; or
    - (ii) provided by the governing body of a maintained school
  - (c) recreational or training facilities secured by a local education authority.
- (2) Part 2 of that Schedule modifies this Chapter for the purpose of its application in relation to –
  - (a) further education, within the meaning of section 1(5)(b)(iii) of the Education (Scotland) Act 1980
  - (b) facilities whose provision is secured by an education authority under section 1(3) of that Act.

### **28V Enforcement, remedies and procedure**

- (1) A claim by a person –
  - (a) that a responsible body has discriminated against him in a way which is unlawful under this Chapter
  - (b) that a responsible body is by virtue of section 57 or 58 to be treated as having discriminated against him in such a way, or
  - (c) that a person is by virtue of section 57 to be treated as having discriminated against him in such a way, may be made the subject of civil proceedings in the same

way as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.

- (2) For the avoidance of doubt it is hereby declared that damages in respect of discrimination in a way which is unlawful under this Chapter may include compensation for injury to feelings whether or not they include compensation under any other head.
- (3) Proceedings in England and Wales may be brought only in a county court.
- (4) Proceedings in Scotland may be brought only in a sheriff court.
- (5) The remedies available in such proceedings are those which are available in the High Court or (as the case may be) the Court of Session.
- (6) The fact that a person who brings proceedings under this Part against a responsible body may also be entitled to bring proceedings against that body under Part 2 is not to affect the proceedings under this Part.
- (7) Part 4 of Schedule 3 makes further provision about the enforcement of this Part and about procedure.

### **28W Occupation of premises by educational institutions**

- (1) This section applies if –
  - (a) premises are occupied by an educational institution under a lease
  - (b) but for this section, the responsible body would not be entitled to make a particular alteration to the premises; and
  - (c) the alteration is one which the responsible body proposes to make in order to comply with section 28T.
- (2) Except to the extent to which it expressly so provides, the lease has effect, as a result of this subsection, as if it provided –

- (a) for the responsible body to be entitled to make the alteration with the written consent of the lessor
- (b) for the responsible body to have to make a written application to the lessor for consent if it wishes to make the alteration
- (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
- (d) for the lessor to be entitled to make his consent subject to reasonable conditions.

(3) In this section –

‘lease’ includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; and ‘sub-lease’ and ‘sub-tenancy’ have such meaning as may be prescribed.

(4) If the terms and conditions of a lease –

- (a) impose conditions which are to apply if the responsible body alters the premises, or
- (b) entitle the lessor to impose conditions when consenting to the responsible body’s altering the premises, the responsible body is to be treated for the purposes of subsection (1) as not being entitled to make the alteration.

(5) Part 3 of Schedule 4 supplements the provisions of this section.

### **28X Validity and revision of agreements**

Section 28P applies for the purposes of this Chapter as it applies for the purposes of Chapter 1, but with the substitution, for paragraphs (a) and (b) of subsection (2), of ‘under section 28V’.

### **31A Interpretation**

(1) Subsections (2) to (4) apply for the purpose of interpreting this Chapter.

- (2) 'Disabled student' means a student who is a disabled person.
- (3) 'Student' means a person who is attending, or undertaking a course of study at, an educational institution.
- (4) 'Educational institution', 'responsible body' and 'student services' have the meaning given in section 28R.

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