



EQUALITY ACT TRAINING FOR WELFARE BENEFITS ADVISORS

Everyone has a right to **justice**
and for their **voice** to be heard

Leigh Day





Agenda

1. What is discrimination?
2. Who is protected?
3. Elements of a discrimination claim?
4. How is a claim brought?
5. Who are claims brought against?
6. Identifying potential claims
7. Referring cases

What is Discrimination?

- Discrimination is the unequal treatment of an individual or individuals on the grounds of one of the protected characteristics.
- Claims for discrimination are issued under the Equality Act 2010 ['EQA'] which consolidated all the previous different legislation for discrimination.



Who is Protected?

The Protected Characteristics are:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; or
- sexual orientation.

Section 6 EQA - Disability

A disability is defined as:

- a physical or mental impairment;
- which has a substantial and long term adverse effect on a persons ability to carry out normal day to day activities.
- “Substantial” is considered as “more than trivial”.
- Long term is where a condition has or is likely to last more than 12 months.



Examples of Disabilities

- Anxiety
- Depression
- Arthritis
- Severe IBS/Crohns
- Cancer
- Down's Syndrome
- ME/CFS
- Fibromyalgia



Elements of a Discrimination Claim



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S. 13 EQA 'Direct Discrimination'

- Direct Discrimination occurs when a person treats another person less favourably because of one of the protected characteristics.
- The Claimant must propose a comparator, someone who does not share their protected characteristic who has been treated more favourably.
- Importantly there is no proportionality defence but a claim for direct discrimination is often difficult to establish.

Examples

- If a service user is attending Work Related Activity and is not put forward for employment/training opportunities because they are disabled
- If a service user is told that they cannot attend certain premises because they are disabled
- If support is removed from a service user because they are disabled

S. 15 EQA ‘Discrimination arising out of a disability’

Discrimination arising out of disability occurs when a person is treated less favourably because of something arising out of a disability and the Respondent / Defendant cannot show that this treatment is a proportionate way of achieving a legitimate aim.

Examples

- A service user suffers from agoraphobia, they are told that they must attend a Work Focused Interview at their local JCP. The service user fails to attend and is sanctioned.
- A service user suffers from anxiety, they are told they must attend group training sessions by their WRA provider. The service user fails to attend and is sanctioned.

S. 19 EQA 'Indirect Discrimination'

Indirect discrimination is where a provision, criterion or practice is applied to everyone however it puts a person / people at a disadvantage when compared to others who do not share that particular protected characteristic.

Examples

- The DWP refers a service user to a work programme provider. The DWP fail to inform the work programme provider that the service user suffers from a disability. Suitable support is not arranged for the service user.
- A local JCP does not refer their disabled service users to a specialist disability trained advisor.
- A local JCP gives all jobseekers a standardised jobseekers agreement.

S. 20/21 EQA 'Failure to make reasonable adjustments'

A duty to make reasonable adjustments arises when:

- a provision, criterion or practice a disabled person at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage;
- where a physical feature puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage;

S. 20/21 EQA 'Failure to make reasonable adjustments'

- where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.
- A claim arises when there is a failure to comply with this duty.

Examples

- A local JCP does not refer their disabled service users to a specialist disability trained advisor. A service user asks for a specialist advisor and is told that one is not going to be made available
- A service user with anxiety is required to attend a work focused interview at her local JCP. She asks for a taxi to be provided, the DWP refuse to provide one.

S. 26 EQA 'Harassment'

Harassment is when:

- A person engages in unwanted conduct related to a relevant protected characteristic, and
- the conduct has the purpose or effect of -
- violating another person's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

Examples

- A service user attends a work programme provider. Upon attending they are told by their contact that it is a nightmare finding work for disabled people as no-one wants to employ them.
- A service user is struggling to get up some stairs to a medical assessment due to problems with mobility. The assessor states that they must hurry up as they don't have all day.

S. 27 EQA 'Victimisation'

A person victimises another person if a person is subjected to a detriment because—

- a person has done a protected act, or
- A person believes that the person has done, or may do, a protected act.

S. 27 EQA 'Victimisation'

Each of the following is a protected act -

- a) bringing proceedings under the EQA;
- b) giving evidence or information in connection with proceedings under the EQA;
- c) doing any other thing for the purposes of or in connection with the EQA;
- d) making an allegation (whether or not express) that A or another person has contravened the EQA.

Examples

- A service user attends a work focused interview. They tell the advisor that the work related activity they are to be provided is not suitable for them due to their disability. The service user is sanctioned for failing to comply with the requirement to take part in work related activity.
- A service user asks their work programme provider not to put them in group sessions as they suffer from anxiety. The work programme provider stops offering the service user their support.



HOW IS A CLAIM BROUGHT



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Bringing A Claim

- Discrimination claims can be issued within the Employment Tribunal or the Civil Courts.
- Part 5 of the Equality Act deals with discrimination claims arising from work or work related activity. Therefore all claims that are issued against employers or work providers are issued in the Employment Tribunal under this part of the Act.



Bringing A Claim

- Part 3 of the Equality Act deals with discrimination claims arising from service providers. Therefore all of these types of claims are issued in the Civil Courts under this part of the Act.
- With work programme providers it can be very difficult to identify whether the claim should properly be brought in the Employment Tribunal or the Civil Courts.

Time Limits

- To issue a claim in the Employment Tribunal generally you must do so within 3 months less 1 day of the act of discrimination if it's a one off act of discrimination, or, if it's a series of acts, from the last act of discrimination.
- To issue a claim for discrimination in the Civil Courts generally you must do so within 6 months less 1 day of the act of discrimination if it's a one off act of discrimination, or, if it's a series of acts, from the last act of discrimination.
- There is potential to argue the discrimination is a continuing act however often this is a difficult argument to establish.

Initial Stages

- For Employment Tribunal cases the procedure is fairly straightforward, commence ACAS conciliation and when this is finished submit an ET1 Online, fees are no longer payable.
- For Civil Court cases a pre-action letter must be sent and the claim must then be issued and, where appropriate, served. A fee must be paid to issue a claim unless a fee remission can be obtained.

How to identify potential discrimination claims

Questions such as the following will assist:

- Has your service user been treated differently in comparison to others?
- Do you feel that they have been treated differently due to a protected characteristic or its effect upon them?
- Have there been any specific comments made in relation to the protected characteristic?
- Have they complained and been treated differently?
- Are there any rules / procedures that put them at a disadvantage when compared to other people?



Referrals

A Streamlined Process



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How to Refer

- Refer cases simply by contacting my paralegal or I by phone or email with basic details
- I can be contacted on 0161 393 3565 or at rbradshaw@leighday.co.uk
- We can contact potential Claimants individually however will ideally work with frontline advisors to manage the process



Managing Referrals

- It is intended that after the referral the advisor can have as much involvement as they want
- Once we have received a referral we will endeavour to obtain suitable third party funding
- If third party funding is not available we will propose to act under a no win no fee agreement



CASES THAT MAY ATTRACT FUNDING



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Civil Action Against DWP

Funding from the EHRC may be available for the following:

- Claims arising out of failure to award PIP higher mobility to Claimants with MH issues
- Inappropriate conditionality for UC Claimants
- Claims against sanctions unjustly applied against people with protected characteristics
- Claims where there has been a failure to make a home visit by the DWP
- Failure to provide private spaces in JCP environment
- Barring people from their local JCP due to conduct arising out of MH issues

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Questions



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