

**Department for Work and Pensions (DWP)  
Central Freedom of Information Team**

freedom-of-information-request@dwp.gsi.gov.uk

**Our reference:** VTR 303

**Date:** 23 February 2016

Dear Mr Stirling,

Thank you for your Freedom of Information request received on 26 January 2016. You asked:

***“What internal guidance of practices exist for dealing with equalities act requests - specifically for PIP/DLA/ESA.***

***What if any is the suggested procedure for claimants who wish to request an equality adjustment?”***

Response:

All DWP staff have a legal duty to comply with the requirements of the Equality Act 2010. DWP has a legal duty not to discriminate against customers who are protected by the Equality Act. Therefore, staff must make sure they understand their responsibilities so that they know how to recognise customers who may need additional support to access DWP services; how to put the necessary support in place for customers and how to ensure this is consistently applied.

You have asked about ***“What internal guidance of practices exist for dealing with equalities act requests - specifically for PIP/DLA/ESA.”*** On the basis of your reference to an ***“equality adjustment”***, we take this to mean the application of the Equality Act in relation to making reasonable adjustments. In support of such responsibilities, the Department has internal guidance for our staff to support customers to access our services. This guidance is generic as meeting the duties of the Equality Act are not restricted by any particular benefit. In particular, the duty created by Section 20 of the Equality Act is to make reasonable adjustments for disabled people and covers all DWP programmes, services and premises. Please see in the attached annex an extract of the Department’s internal Access to Services guidance which details the Equality Act requirements and reasonable adjustments.

You also asked ***“What if any is the suggested procedure for claimants who wish to request an equality adjustment?”*** The duty created by Section 20 of the Equality Act is an anticipatory duty. This means that we must not wait until a disabled person wants to use our services before we consider the type of reasonable adjustments that may be needed. We must anticipate the

requirements of disabled people and the adjustments that may have to be made for them.

Establishing and providing a reasonable adjustment, whether the need is identified by DWP staff or volunteered by the customer, depends on the particular circumstances and will be specific to the needs of the disabled customer. Staff are trained to help identify and provide the right support to individual customers, this includes appropriate reasonable adjustments.

Customers can request a reasonable adjustment through any of the channels they use to make contact with DWP. For example, this may include face to face contact on our premises; home visits; telephony; online services; and written communications.

If you have any queries about this letter please contact us quoting the reference number above.

Yours sincerely,

DWP Central FoI Team

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#### **Your right to complain under the Freedom of Information Act**

If you are not happy with this response you may request an internal review by e-mailing [freedom-of-information-request@dwpgsi.gov.uk](mailto:freedom-of-information-request@dwpgsi.gov.uk) or by writing to: DWP, Central FoI Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF  
[www.ico.org.uk/Global/contact\\_us](http://www.ico.org.uk/Global/contact_us) or telephone 0303 123 1113 or 01625 545745

# Delivering Equality for customers - Access to DWP services

## What is the Equality Act?

### Protected Characteristics

1. The Equality Act 2010 is a law protecting people from discrimination on the basis of 'protected characteristics'. The protected characteristics are:
  - Age
  - Disability
  - Gender reassignment
  - Marriage and civil partnership
  - Pregnancy and maternity
  - Race
  - Religion or belief
  - Sex
  - Sexual orientation
2. The Equality Act protects these groups of customers from:
  - Direct discrimination
  - Indirect discrimination
  - Harassment
  - Victimisation

### Types of Discrimination

3. **Direct discrimination** happens where the reason for a person being treated less favourably than another is because of a protected characteristic.
4. **Indirect discrimination** happens when a policy which applies in the same way for everybody has an effect which particularly disadvantages people with a protected characteristic.
5. **Harassment** and bullying is unwanted behaviour that has the purpose or effect of violating a person's dignity or creates a degrading, humiliating, hostile, intimidating or offensive environment. Under the Equality Act, someone can complain about behaviour they find offensive even if it is not directed at them.
6. **Victimisation** takes place where one person treats another badly because they make, or support, a complaint of discrimination. A person is not protected from victimisation where he or she maliciously makes or supports an untrue complaint. Only an individual can bring a claim for victimisation.
7. **Discrimination "arising from disability"** happens when a disabled person is treated less favourably because of something arising in consequence of their disability, and where the treatment cannot be justified by the person doing it. An example might be refusing a customer entry into a DWP building with his/her assistance dog.

### Compliance with the Equality Act 2010

8. To ensure DWP complies with the Equality Act, all staff must

- Make sure there is no unlawful discrimination, harassment and bullying or victimisation of customers with protected characteristics when they access our services.
- Make reasonable adjustments to enable disabled customers to access benefits and use our services.
- Complying with the legal requirements of the Equality Act 2010 is part of the Civil Service Code. Therefore, any member of staff who fails to comply could face disciplinary action.
- If a customer is able to establish in a court that they have experienced discrimination as defined in the Equality Act, they could be awarded compensation. This could be awarded either against DWP or an individual member of staff. Therefore, staff must take their responsibilities in regard to complying with the Equality Act seriously.
- Keep up to date and be aware of the Equality Act requirements for service delivery

### **Communicating verbally with customers**

9. Consider the words used when engaging with customers. To show respect to customers, inclusive language should be used. Use the right language to show commitment to preventing discrimination and promoting good relations and equality of opportunity. All DWP staff have an active role to play to promote equality and using the correct language can support this. Abusive words and language with negative undertones must be avoided and challenged if used by other staff or customers.
10. If a customer requests a Reasonable Adjustment, there is no requirement to explain our internal processes to customers in relation to how we provide Reasonable Adjustments. They should be informed of any relevant timescales and it is recommended that staff discuss alternative Reasonable Adjustments with the customer so consideration can be given to providing the most appropriate way of enabling the customer to access benefits and use our services

### **Complaints**

11. DWP Guidance for dealing with complaints relating to Discrimination, Harassment and Victimisation

### **Disability**

#### **The Definition of Disability**

12. Only those disabled people who are defined as disabled under the Equality Act are entitled to this protection. This Act says: **“A person has a disability for the purposes of the Equality Act if he or she has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.”** The [Equality and Human Rights Commission](#) have provided additional guidance on the definition of disability.

13. "Substantial" effect means, according to the Equality Act, an effect which is more than minor or trivial. "Long term" is defined as 'has lasted or is likely to last at least 12 months
14. Cancer, HIV infection and multiple sclerosis are defined as disabilities;
15. An impairment which consists of a severe disfigurement would be considered as having a substantial adverse effect.
16. Certain conditions are specifically *not* to be regarded as "impairments" for the purposes of the Equality Act. These are:
  - addiction to, or dependency on, alcohol, nicotine, or any other substance (other than in consequence of i) the substance being medically prescribed or ii) other medical treatment);
  - the condition known as seasonal allergic rhinitis (e.g. hay fever), except where it aggravates the effect of another condition;
  - tendency to set fires;
  - tendency to steal;
  - tendency to physical or sexual abuse of other persons;
  - exhibitionism;
  - Voyeurism.
17. People with these behaviours or conditions are not therefore disabled under the Equality Act. But remember, DWP may still have a specific policy supporting these people (e.g., for those customers with drug and alcohol issues) and they may also come within the DWP description of Vulnerability.
18. In addition, some people can be deemed to be disabled by specific parts of the Equality Act. This does mean the law is complex. If you have any doubt about whether or not a customer is disabled contact the DWP Equality Team Social Justice.
19. The Equality Act also provides protection for non-disabled people who are subjected to direct discrimination or harassment because of their association with a disabled person or because they are wrongly perceived to be disabled. Again, please contact the DWP Equality Team Social Justice if you are in any doubt as to the law and disability.

### **Recognising a customer's disability**

20. For DWP, this is about deciding if a customer is disabled under the Equality Act *in relation to accessing DWP benefits and services*. This is not about deciding questions relating to benefit entitlement or to benefit premiums, nor for deciding what is appropriate for a customer in their claimant commitment etc. In deciding benefit entitlement, medical evidence may be required. Accepting that the customer is disabled under the Equality Act for the purposes contained in this guidance simply means we will put in place reasonable adjustments to enable the customer to access benefits and services. Putting a reasonable adjustment in place does not impact on entitlement to a disability benefit or premium.
21. In most instances, it will be clear without extensive discussion whether a person has a disability. When there is any doubt, as to whether a customer's disability does meet the legal definition, do not challenge the

customer. Only a court or tribunal will be able to decide whether or not the customer is disabled within the meaning of the Equality Act

22. To help recognise if a customer is disabled please consider the following:

- Does the customer have (or appear to have) a physical or mental impairment?
- Is the condition excluded from the provisions of the Equality Act?
- Does the customer have a past disability?
- Does the customer have a severe disfigurement?
- Does the customer have a progressive condition?
- Does the customer have a recurring condition?
- Is the condition long-term? This usually means that the impairment has lasted or is likely to last at least 12 months, although there are special rules covering recurring or fluctuating conditions.
- Does the condition affect normal day-to-day activities?

23. Ask how you can help if a person says they are experiencing difficulties because of a health condition or disability.

24. Be aware of hidden disability and hidden impairments.

25. Further information on who is defined as disabled under the Equality Act can be found on the [Equality and Human Rights Commission](#) website.

26. Medical evidence should not generally be needed to confirm whether to treat a disabled customer as disabled for the purposes of accessing benefits and services. The customer's statements on this matter as per the factors to consider above should be accepted. Insisting on medical evidence could in itself lead to a claim of discrimination by a disabled customer. Please contact the DWP Equality Team Social Justice if you are in any doubt.

## **General rules regarding access to benefits and services**

27. Different protected characteristics have different impacts for customers accessing our services.

28. The Equality Act protects the rights of disabled people not to be discriminated against by those providing goods, facilities or services to the public.

29. Additionally, the duty created by s.20 of the Equality Act to make reasonable adjustments for disabled people covers all DWP programmes, services and premises. The main areas likely to be affected are:

- access to benefits and services
- access to DWP premises
- public access to communications and IT
- access to programme providers and partners
- accessibility of leaflets, public information and individual customer communications
- support to disabled people participating in DWP programmes
- general customer care issues

30. If any of these areas are not readily accessible to disabled customers then reasonable adjustments must be considered to enable easier access for disabled customers. As such, the ability to identify disabled

customers and deal sensitively and efficiently with their needs is of prime importance.

31. Work has been done to review customer service to disabled people and to build into processes and practices steps to ensure disabled people receive a standard of service that is as close as possible to that received by non-disabled people. Each DWP office, benefit and policy division is responsible for ensuring this happens in their area of work. If you notice any process, procedure or guidance that appears to conflict with, or fails to support this duty, please contact your manager and Advice Line initially. If this does not resolve your issue please contact the DWP Equality Team Social Justice.

## Reasonable Adjustments

32. DWP has a legal duty under the Equality Act to make reasonable adjustments in all the following circumstances:
  - Where a disabled person is at a substantial disadvantage in relation to a relevant matter in comparison with a non-disabled person we must remove or alter what we do to avoid the disadvantage. This could be a certain practice or physical feature.
  - Where, but for the provision of an auxiliary (supporting) aid, a disabled person would be put at a substantial disadvantage in relation to a relevant matter in comparison with a non-disabled person we take reasonable steps to provide the auxiliary aid or service.
  - Where the adjustment relates to the provision of information, .i.e. letters and correspondence, then this should be provided in an accessible format. For example this could be large print, braille, audio. It could also include the contents being read to the customer by a friend, representative or a member of staff.
33. The duty to make reasonable adjustments is **anticipatory**: we must not wait until a disabled person wants to use our services before we consider the type of reasonable adjustments needed. We must anticipate the requirements of disabled people and the adjustments that may have to be made for them.
34. Every time that there is customer contact by phone, online or in writing, staff must actively seek to find out if the customer needs additional support or a reasonable adjustment.
35. What is a reasonable adjustment depends on the circumstances of the case and will be specific to the needs of the disabled customer. DWP considers the type of service being provided; our size and resources; and the effect of the disability on the individual disabled person. A variety of reasonable adjustments is available to offer to customers. See list below.
36. A reasonable adjustment can be put in place on a temporary, short term or long term basis. For example, there may be a temporary situation affecting the symptoms of the disability so the customer requires support now to enable them to access benefits and services but may not require this support when their circumstances change.
37. **Remember: you must record the reasonable adjustment so other colleagues engaging with this customer will know what to do. This will help to provide consistent service delivery and stop the**

**customer having to repeat their request. If the customer has to tell us twice, we may have failed in our duty.**

38. The requirement for a reasonable adjustment should be regularly reviewed to ensure it continues to meet the needs of the customer and is in line with the current range of support offered by DWP.
39. Please note that in all cases the Equality Act prohibits us from requiring customers to pay to any extent the costs of making any adjustments.

### **Auxiliary Aids and Services**

40. DWP must take reasonable steps to provide auxiliary aids or services to ensure disabled customers are not disadvantaged in the level of service they receive. Exactly what DWP should provide is based on the individual customer and disability concerned.

### **Overcoming Barriers Created By Physical Features**

41. The Equality Act requires DWP to ensure that disabled people can access all the services they provide. A provider cannot offer a lesser standard of service to a disabled person simply because of unsuitable premises. Where a physical feature puts disabled customers at a substantial disadvantage when using DWP services, reasonable steps must be taken to:
  - Remove the feature;
  - Alter it; or
  - Provide a reasonable means of avoiding it.
42. This means DWP must give consideration to our premises in terms of the way they are accessed and organised. Where it is not possible for a customer to access the full range of services on the usual premises, then DWP must take reasonable steps to devise alternative ways to provide the same range and quality of service. DWP cannot delegate its Equality duty to the organisations we work with.
43. The providers/partner organisations that DWP work with must give consideration to their premises in terms of the way they are accessed and organised. Where it is not possible for a customer to access the full range of services on the usual premises, then the provider/partner organisation must take reasonable steps to devise alternative ways to provide the same range and quality of service and comply with the Equality Act.