

Refusal to Serve and Exceptions to the Disability Duty

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124. There may be some circumstances when DWP may treat a disabled customer less favourably or refuse to serve a disabled customer. However, this is only if one of the conditions outlined below applies. DWP must act reasonably and take into account all the circumstances and information available before taking such action. If a disabled customer shows that they have been unfavourably treated because of something arising in consequence of someone's disability, DWP will have to provide evidence that such actions were justified.

Health and Safety

125. The Equality Act does not require DWP to do anything which would endanger the health and safety of any person, including that of the disabled person. Further information can be found on the Health and Safety Executive website.

Incapacity to Contract

126. The Equality Act does not require DWP to contract with a disabled person who is incapable of entering into a legally enforceable agreement or of giving agreement for the provision of a particular service.

127. DWP may not refuse to serve someone who has the legal power to act on behalf of a disabled person under a power of attorney or its Scottish equivalent.

128. Remember, under the Equality Act, adjustments must be made where disabled people experience a 'substantial disadvantage'. It is not possible for DWP to legally justify failing to provide a reasonable adjustment. By definition, if the adjustment is reasonable, we must make it.

Disability, Equality and other Legislation

129. The Equality Act does not:

- make unlawful anything done to comply with other legislation; or
- make unlawful any act done to safeguard national security, anything that it is proportionate to do for that purpose.

Suspension of Services to Individual Customers

130. It is important to understand the implications of refusing to serve a disabled person and the impact it may have on DWP business.

131. One situation where a potential claim to discrimination may occur is where DWP services are suspended to an individual because of Unreasonable customer/claimant behaviour

132. All staff should be aware that where unreasonable behaviour is caused by or is a symptom of a disability, for example some people with mental illness, the disabled person could at a later date claim they have been discriminated against.

133. If services are suspended to a customer due to disruptive behaviour caused by a condition that is covered by the definition of disability, it is important that the decision not to serve them is reviewed regularly as their behaviour may differ from day to day and on subsequent visits may be perfectly reasonable.

134. The Equality Act cannot be used as an excuse for disruptive or anti-social behaviour. If a disabled customer is refused service for reasons unrelated to their disability, for example, they have had too much to drink and are behaving unreasonably it is unlikely that they would be able to bring an action against DWP under the Equality Act. Furthermore, the duty to protect the health and safety of staff and customers overrides the duty to make reasonable adjustments because anything that puts health and safety at risk is by definition not reasonable.

135. It is therefore extremely important to ensure that records are kept of any incidents where an individual is refused access to a service. These must document:

- the reason why access was refused;
- the reaction of the individual and a record of the conversation that took place between the individual and the person that dealt with the incident; and
- copies of any resulting correspondence should also be kept, i.e. letter from the manager informing the individual that DWP services are suspended to them and any reply received.

136. These records may be needed at a later date by a court of law to help prove or disprove a case.

Disability and Benefit Entitlement, Payability and Conditionality

137. Accepting that a customer is disabled under the Equality Act for the purpose of access to DWP services does not mean we are making a decision on benefit entitlement, payability or conditionality. If evidence is available because of the decision staff have made on the question of disability under the Equality Act then, if relevant, this evidence may be taken into account in decisions relating to entitlement, payability or conditionality but it must be clearly noted that these are separate issues.

138. For example, a decision to treat a customer as disabled under the Equality Act and therefore to provide one of the reasonable adjustments above in no way establishes entitlement to Personal Independence Payment. Likewise, such a decision in no way necessitates there being any given element or condition in a Claimant Commitment for that customer. Different legislation governs these different questions.

139. See the Accessibility Checklist to help support customers to access DWP services.