

## Disability

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### **The Definition of Disability**

18. 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.

19. "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

20. Cancer, HIV infection and multiple sclerosis are defined as disabilities;

21. An impairment which consists of a severe disfigurement would be considered as having a substantial adverse effect.

22. 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.

23. 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.

24. In addition, some people can be deemed to be disabled by specific parts of the Equality Act. This does mean the law is complex.

25. 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. If you are unable to resolve your issue or find an answer to a particular question using these instructions please access the Advice portal to post your query

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

26. 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.

27. 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

28. 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?

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

30. Be aware of hidden disability and hidden impairments. See: Types of disabilities and impact.

31. Further information on who is defined as disabled under the Equality Act can be found on the Equality and Human Rights Commission website.

32. 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 the above should be accepted. Insisting on medical evidence could in itself lead to a claim of discrimination by a disabled customer.