

## Birmingham City Council Equality Act 2010 Fact Sheet

of protection afforded to different protected groups. The protected

This Fact Sheet discusses the provisions with regard to **DISABILITY**. It forms part of a series of fact sheets on relevant points pertaining to the Act for each of the protected characteristics. More detailed guidance and information can be found in the Equality Act 2010 Statutory Code of Practice and the [Equality Act 2010 Statutory Code of Practice](#)

The Equality Act replaced the Disability Discrimination Act 1995 and 2005 (DDA). It introduced new provisions on direct discrimination, discrimination arising from disability, harassment and indirect discrimination. Services, public functions

### **WHAT IS THE PROTECTED CHARACTERISTIC OF DISABILITY?**

The Act defines Disability by reference to a person's disability. As explained in the Equality Act 2010 Explanatory Notes:

The Act says that a person has a disability if they have a physical or mental impairment which has a **long-term and substantial adverse effect on their ability to carry out normal day-to-day activities**. Physical or mental impairment includes sensory impairments such as those affecting sight or hearing.

An impairment which consists of a severe disfigurement is treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities.

### **How long is long term**

**\_\_\_\_\_** - To satisfy the definition in the Act, the disability must:

- Have lasted at least 12 months, or
- Be likely to last at least 12 months, or
- Be likely to last for the rest of the person's lifetime (if less than 12 months)

The Act also covers people whose condition may involve periods of remission. Although the impairment may no longer have an adverse effect, it will still be deemed to have that effect if it is "likely to recur".

**What are normal day to day activities** - The phrase “normal day-to-day activities” means those activities that are “normal” for most people in their

## **WHAT FORM OF PROTECTION DOES THE ACT PROVIDE?**

Those who share the protected characteristic of Disability are protected from direct and indirect discrimination, harassment and victimisation, as described below. Such protection applies in a range of areas including **Employment; Access to goods, services and facilities; Education; and Buying and renting property.**

The protection also applies to private clubs and associations with 25 or more members.

**Direct Disability discrimination** is where someone is unfairly treated because of their disability. In order to determine whether someone is directly discriminated against a comparison has to be made with someone without that disability but whose abilities and circumstances are the same or not materially different.

### **Examples:**

- Someone who is refused flexible working to look after their disabled child although it has been granted to other workers who do not have a disabled child
- Someone who is prevented from attending a training session because they are thought to have bi-polar disorder

The definition is wide enough to cover those who are also discriminated against because they are perceived to have a disability or because they are associated with someone who has a disability. This includes:

Discrimination by **Perception** – e.g. where a person is discriminated against or harassed because he or she is mistakenly thought to share a protected characteristic such as disability.

Discrimination by **Association** – e.g. where a person is discriminated against or harassed because he or she is associated with a person who has a protected characteristic such as disability.

An example of this could be where an

A pupil with cerebral palsy who is a wheelchair user is told she will be unable to attend a school trip to a local theatre putting on a production of a play she is currently studying in English, because the building is not wheelchair accessible. The pupil and her parents are aware that the play is also on at a theatre in a neighbouring city which is accessible but the school does not investigate this option. This is likely to be direct discrimination because of a disability

**Harassment** is unwanted conduct which violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person. The definition of harassment also applies to those subjected to unwanted conduct because of another person's disability.

**Examples:**

A disabled person attends a day centre for adults with learning difficulties. Some staff makes fun of him by mimicking him.

An employee who is subjected to offensive comments about her disabled daughters.

**Victimisation** is where someone who has made a complaint of discrimination or harassment or supported someone else's complaint is victimised as a consequence. This applies where the person providing the support to someone taking out a complaint does not have to be disabled themselves.

**Example:** A customer has arranged to be a witness and to give evidence in a court case against a service provider and in response the service provider threatens not to serve that customer in future if they go ahead with giving evidence<sup>1</sup>

Also discrimination arising from disability is not unlawful if an employer or service provider can show that they did not know, or could not be reasonably expected to know, that the person has a disability.

**Example:** Sarah seeks admission to a crèche for her son who has a disability which means that he does not have full bowel control. The crèche says that they cannot admit her son because he is not toilet trained and the children at the crèche are required to be. The refusal to admit Sarah's son is not because of his disability itself; but he is experiencing detrimental treatment as a consequence of his incontinence, which is something, arising from his disability. Sarah could challenge this exclusion on her son's behalf by making a claim in the county court. The exclusion would be unlawful discrimination arising from disability unless the crèche could demonstrate to the court that it did not know that the boy was disabled, or could demonstrate that its action was justified.

### **Duty to make Adjustments**

Service Providers - have a legal requirement to make reasonable changes to the way things are done (such as changing a policy), to the built environment (such as making changes to the structure of a building to improve access) and to provide auxiliary aids and services (such as providing information in an accessible format, an induction loop for customers with hearing aids, special computer software or additional staff support when using a service).

Where a service is delivered from a building that cannot be made accessible through reasonable adjustments, it may be a reasonable adjustment to provide the service at a different venue, including a home visit.

Employment - When an employer knows or reasonably ought to know of the disabled person's disability they are under a duty to make a reasonable adjustment.

The duty arises when a physical feature of the premises or not providing an auxiliary aid places a disabled person at a substantial disadvantage in comparison to those who are not disabled.

The duty on the employer is to take such steps as it is reasonable to have to take to avoid the disadvantage. What is reasonable may depend on whether the step would remove the disadvantage, the cost and whether there was any financial assistance available, for instance from Access to Work. An employer cannot require a disabled worker to pay for the cost of any reasonable adjustment.



The Order specifies particular types of disability based actions, measures and practices that are considered "to be just

## **DO PUBLIC BODIES HAVE A DUTY TO PROMOTE DISABILITY EQUALITY?**

The Equality Act includes a public sector Equality Duty (also known as the General Duty), which requires public bodies, when exercising their functions, to have due regard to the need to eliminate discrimination, advance equality of opportunity for people of different groups, and foster good relations between people who share the protected characteristic and those who do not.

**Service Delivery** - Local authorities need to be proactive in tackling discrimination and inequalities and in identifying and responding to the needs of people who share the protected characteristic of disability when designing and delivering services.

**Accessibility** - Any organisation providing services to the public need to make the appropriate arrangement to ensure all service outlets and the services themselves are fully accessible. Factors to be considered in meeting accessibility needs:

- Location / Means of escape / Lighting / parking
- Entrance and movement inside e.g. ramps, width of doors, signage that is large and provides visual information, lifts, handrails
- Induction loops systems that have been tested / Sign language interpreters
- Seating arrangements/Facilities for guide dogs/Accessible toilets / Catering

**Treating disabled people more favourably than people who are not disabled** - S.149(4) of the Act states that the steps involved in meeting the needs of disabled persons include steps to take account of disabled persons' disabilities. This emphasises the fact that equality of opportunity for disabled people cannot be achieved simply by treating disabled and non-disabled people alike. The Act contains a number of provisions allowing steps to be taken to take account of disabled persons' disabilities. They make it lawful to treat a disabled person more favourably than a non-disabled person. A disabled person can also be treated more favourably than disabled people with other impairments by relying on the positive action provisions outlined earlier.<sup>3</sup> In order to comply with the general equality duty, relevant bodies should consider meeting the needs of disabled people by treating them more favourably than others.

**Education** - It is against the law for a school or other education provider to treat disabled students unfavourably. This includes:

- 'direct discrimination' e.g. refusing admission to a student because of disability
- 'indirect discrimination' – e.g. only providing application forms in one format that may not be accessible
- 'discrimination arising from a disability' e.g. a disabled pupil is prevented from going outside at break time because it takes too long to get there
- 'harassment' – e.g. a teacher shouts at a disabled student for not paying attention when the student's disability stops them from easily concentrating
- victimisation – e.g. suspending a disabled student because they've complained about harassment

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<sup>3</sup> For more details see the Commission's Code of Practice on Services, Public Functions and Associations at para 10.27.  
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