

Meaning of Disability under UK Law

To benefit from the DDA's protection, you must either be a person who has a disability or be a person who has had such a disability. 'Disability' means:

a) you have a mental or physical impairment;

b) which is long term; and

c) has a substantial adverse effect

d) on your normal day-to-day activities.

There are some conditions where the person is deemed to have disability, whether or not that condition has yet had any effect on that person's ability to carry out day-to-day activity. So if you are diagnosed as suffering from certain cancers, multiple sclerosis or HIV infection, you will be deemed to have a disability, regardless of whether you have any symptoms yet.

The Impairment

Physical impairment is not defined but is taken to refer to some damage or defect to the condition of a person's body, which may or may not be a clinically treatable medical condition. It refers to a person having something wrong with them physically. Mental impairment, again, is not defined. It is no longer necessary for a mental impairment to be a recognised psychiatric illness but frequently medical evidence will be required in order to show whether or not there is a mental or physical impairment.

There are a number of conditions that are expressly excluded from being considered an impairment under the DDA. These include:

- addictions to alcohol, tobacco or illicit drugs,
- tendency to set fires, tendency to steal or tendency to violence.
- hayfever (unless it aggravates another condition)

Long Term

An impairment will be held to be of long term effect if it has lasted 12 months, or is likely to last 12 months or for the rest of your life. Furthermore, where an impairment has had a substantial effect on your ability to carry out day-to-day activities but that effect has ceased temporarily, the impairment will be treated as continuing to have that effect (and therefore be long term) if the effect is likely to recur.

Substantial adverse effect

Substantial means more than minor or trivial. This includes a cumulative effect. In assessing whether the impairment is substantial the general rule is that you ignore the effects of any treatment or coping strategy that may have reduced that impairment. So if you wear a hearing aid the question will be whether your hearing impairment would have a substantial adverse effect were you not using the aid. The fact that the hearing aid reduces your impairment should be disregarded. This general rule does not apply however to the correction of your eyesight by glasses or contact lenses. Nor does it apply where the effect of the treatment is to permanently improve your condition.

Day-to-day activities

These include mobility, manual dexterity, physical co-ordination; continence, ability to lift, carry or otherwise move everyday objects, speech, hearing or eyesight; memory, ability to concentrate, learn or understand, or perception of risk or danger.

Right to Receive Equal Treatment

This chapter deals with your right not to be discriminated against. It sets out first how the law on equality and discrimination works in the United Kingdom, including how the Human Rights Act can protect you from discrimination, and what the role of the Equalities and Human Rights Commission role is in combating discrimination.

It will then deal with each of the heads of discrimination (race, sex, sexual orientation, transgender, disability and age) in turn.

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UK Law on Equality and Discrimination

The United Kingdom (UK) has specific legislation on equality that outlaws discrimination and provides a mechanism for individuals to lodge complaints with the courts when they experience unlawful discrimination. The UK now has legislation prohibiting discrimination on the grounds of race, religion and belief, sex, sexual orientation and transgender status, disability and age. Discrimination on any of these grounds is prohibited in the employment sphere. Discrimination on some of these grounds is prohibited in other spheres, such as education, housing, the provision of goods and services and by public authorities. The operation of these different pieces of legislation is dealt with in detail below.

The Human Rights Act 1998 (HRA), which incorporates the rights contained in the European Convention of Human Rights (the Convention) into UK law, is also relevant in challenging discrimination. Unlike UK equality legislation, the HRA can only be enforced directly against public bodies, such as the police or a local authority and private bodies exercising public functions. However, courts and tribunals are themselves public bodies and must interpret and apply legislation in a way that is compatible with the Convention, even when the parties to the dispute are not public bodies. Moreover, it is possible to rely on the Convention in any court or tribunal proceedings, including for example proceedings in an Employment Tribunal, as the court must act compatibly with the Convention when making its decision.

Article 14 of the Convention prohibits discrimination on many grounds including sex, race, religion, political opinion as well as 'any other status'. 'Other status' has been interpreted broadly to cover, for example, marital status, sexuality, financial or employment status, physical or mental ability. Article 14 is not a free standing guarantee of equal treatment or a prohibition on discrimination more generally. Rather, it prohibits discrimination in respect of access to other Convention rights and is intended to guarantee equality before the law of the

Convention.

Article 14 must be used in combination with one or more of the other Articles in the Convention. The other right need not have been breached, but the facts complained of must at least come within the ambit of the substantive right. By way of example, men who have been widowed have used Article 14, together with Protocol 1, Article 1 (protection of property rights) to argue that benefits which were paid to women when their husbands died should also be paid to men when their wives died. They were able to use Article 1 Protocol 1 because benefits can sometimes count as property for the purposes of this Article, so a difference of treatment in respect of benefits came within the ambit of Article 1 Protocol 1.

It is only differences in treatment of people in analogous situations which fall within Article 14 and thus far the European Court of Human Rights (ECHR) has interpreted this condition quite strictly. However, there is no requirement that the difference in treatment has caused a detriment to the complainant.

The right not to be discriminated against is not absolute, and discrimination can be justified if this is necessary to achieve a legitimate aim. Discrimination will only be 'necessary' if the importance of the aim to be achieved is proportionate to the impact that the discrimination will have on the individual who is being discriminated against. There are a number of areas where the ECHR has recognised that it will take very weighty reasons to justify discriminatory measures. These areas include sex and race, but not sexual orientation or disability as yet.

There have been several cases in British courts where people have used Article 14 to enforce their right not to be discriminated against in the enjoyment of other Convention rights. One example is a well-known case which held that housing legislation should be interpreted so as to give homosexual couples the same rights with regard to succession to tenancies as married couples.

Although Protocol 12 of the Convention establishes a free-standing right to protection from discrimination, the UK has not signed this Protocol.

See also Article 14, THE HUMAN RIGHTS ACT 1998: AN OVERVIEW

Equality Bodies and the Commission for Equality and Human Rights

Under each of the discrimination Acts separate equality commissions were established:

- * Commission for Racial Equality.
- * Disability Rights Commission.
- * Equal Opportunities Commission.

The Equalities Act 2006 established a new body called the Commission for Equality and Human Rights (CEHR), which brings together the work of the three Commissions.

The CEHR will take on all of the powers of the existing Commissions, as well as new powers which it plans to use to enforce legislation more effectively and promote equality for all. The CEHR is responsible for tackling all forms of discrimination and ensuring all equality laws are enforced, including new laws dealing with discrimination on the grounds of age, religion and belief, and sexual orientation. Promotion of human rights is also included within the CEHR's remit.

The CEHR covers England, Scotland and Wales. In Scotland and Wales there will be statutory committees responsible for the work of the CEHR. Northern Ireland has its own equality body, the Equality Commission for Northern Ireland.

The CEHR states that it hopes that being a single commission will have many benefits, including:

- * bringing together equality experts and acting as a single source of information and advice - instead of the current separate organisations;
- * being a single point of contact for individuals, businesses and the voluntary and public sectors;
- * helping businesses by promoting awareness of equality issues, which may prevent costly court and tribunal cases;
- * tackling discrimination on multiple levels because some people may face more than one type of discrimination;
- * giving older people a powerful national body to tackle age discrimination

Local Government

If you have suffered an injustice as a result of maladministration by a local authority, you can complain to the Local Government Ombudsman. Maladministration can include failing to receive a service to which you are entitled or suffering financial loss or distress as a consequence of something the local authority has done or has failed to do.

You can complain directly to the Local Government Ombudsman's office about maladministration by any local body, such as the local authority or police authority, but you must complain to that body first to give it a chance to deal with the matter itself.

Which local authorities can you complain about?

The authorities that can be complained about include:

- district, city, borough or county councils