

A Guide for Disabled Students and Learners

Part 4 of the Disability Discrimination Act
1995 – Post 16

The Disability Rights Commission

The Disability Rights Commission (DRC) is an independent body, established by Act of Parliament to eliminate the discrimination faced by disabled people and promote equality of opportunity. When disabled people participate – as citizens, customers and employees – everyone benefits. So we have set ourselves the goal of “a society where all disabled people can participate fully as equal citizens”.

The DRC has offices in England, Scotland and Wales. For further details of how we can help you, please contact our Helpline – contact details are featured at the back of this publication.

Introduction

From September 2002, if you are a disabled student over 16 and think you have been discriminated against, you can challenge this under the Disability Discrimination Act (DDA).

The Disability Rights Commission (DRC) Helpline can give you more advice and information. From September 2002, the DRC will also offer advice, information and support to students and providers of Post 16 education to help in sorting out problems. If you do decide to make a claim against the education provider, the DRC may, in limited circumstances, also be able to legally represent you.

How do I know if I have a disability under the DDA?

The DDA defines disability as a physical or mental impairment, which has a substantial and long-term adverse affect on a person’s ability to perform normal day-to-day activities. For example, if you have problems with mobility, seeing or hearing, a learning disability, mental illness, epilepsy, Aids, asthma, diabetes or a condition that gets progressively worse such as multiple sclerosis, then you may be covered under the DDA.

How can the DDA help me?

From September 2002, it will be against the law for providers of post-16 education and related services to discriminate against you in admissions and enrolment and in any services put on specifically for students. This does not just include teaching and learning but the whole range of opportunities and facilities, for example, student outings, leisure facilities and canteen, libraries and learning centres, work experience and student accommodation.

What is meant by discrimination?

Discrimination can take two forms:

1. Being treated less favourably for a reason related to your disability and the provider cannot justify the treatment. For example:
 - a student with dyslexia applies to do a degree in English and is told by the university that it does not accept dyslexic students on English degrees
 - a student who has mobility problems is told she cannot take part in a recreational trip because of her mobility problems.
2. Being placed at a substantial disadvantage in comparison with non-disabled people because the provider has failed to make reasonable adjustments.

Some examples of reasonable adjustments might be:

- an FE college provides a student with learning difficulties with additional support in her written work so that she can achieve her NVQ qualification
- a local education authority (local authority in Scotland) ensures that a partially sighted adult learner receives handouts in large print
- a Higher Education institution arranges for sign language interpretation in lectures for a deaf student.

These duties are anticipatory. This means that an organisation cannot just wait until it is approached by a disabled student but must be thinking ahead about what adjustments might be needed.

What is “reasonable” when making adjustments?

The DDA does not define “reasonable” and ultimately it will be up to the courts to decide. However, issues such as the cost of the adjustment, the interests of other students, health and safety factors and whether academic standards are maintained will all be taken into account in deciding whether an adjustment is reasonable.

When does the new legislation come into force?

- The main part of the Act comes into force in September 2002
- Adjustments involving “auxiliary aids and services” (that is additional aids or staff – such as additional software for a partially sighted student or extra tutoring for a dyslexic student) are required from September 2003
- Adjustments involving changes in physical features are required from September 2005.

Should I tell the college/adult education organisation/university about my disability?

Yes, it may be the best thing to do. If you choose not to tell, and you are discriminated against, it may be able to claim in defence that it did not know about your disability.

Your educational institute should ask if you have a disability when it accepts you for the course.

Of course you have the right to ask for confidentiality and, in any case, under the Data Protection Act, an institution should not pass on in written form sensitive personal information without your expressed consent. However, if your needs are kept completely confidential it might be difficult for staff to put necessary adjustments in place.

What should I do if I think I have been discriminated against?

Casework and conciliation

The DRC Helpline should be able to help. We may refer your dispute to the DRC Casework Service and be able to get a satisfactory result without taking the case further.

Or, from September 2002, we can refer the dispute to the Disability Conciliation Service (DCS). The aim is to reach an agreement that both sides accept. The conciliation service will be available around the country and disputes may be referred to conciliation if both sides agree.

However, please note that you will not be stopped from taking legal action if you are unhappy with the outcome of the conciliation. If your complaint is referred to the DCS, you will have extra time in which to take legal action.

How do I make a legal complaint?

You may be able to take your dispute further than the DRC by going to court. This will be a civil action in a county court in England and Wales, or the Sheriff Court in Scotland. You need to take your complaint to court within six months of the date when the alleged discrimination took place (this time period is extended to 8 months if the case has first gone to the DCS). If you have been discriminated against over time, the six months begins at the date of the last incident.

If your court case is successful, you could be awarded compensation. You may also seek an injunction (in England and Wales) or an interdict (in Scotland) to stop further discrimination, or to make your educational institute take positive action to avoid discrimination.

In some cases the DRC may be able to provide legal support.

Can I make an informal complaint?

Yes. You can complain directly to the body responsible for your education. They should have a complaints procedure to help solve disputes quickly. You can do this even if you have begun legal proceedings.

Educating for Equality

The DRC is campaigning to improve choice and opportunity for disabled people in education.