# Letter Before Action - Disability Discrimination - Equality Act 2010

<<INSERT YOUR ADDRESS

YOUR ADDRESS

YOUR POSTCODE

#### DATE LBA SENT>>

<<INSERT RECIPIENT NAME

RECIPIENT ADDRESS

RECIPIENT ADDRESS

RECIPIENT POSTCODE>>

Dear <<INSERT NAME or ORG-NAME if you don't have a person's name>>,

I am writing this letter in accordance with the spirit of the Pre Action Protocols. If I do not receive a satisfactory response from <<INSERT ORG-NAME>> within 20 working days of the date of this letter (no later than <<INSERT DATE-FOR-REPLY>>), I intend to issue proceedings against <<INSERT ORG-NAME>> in the County Court without further notice. This may increase <<INSERT ORG-NAME's>> liability for costs.

## Legal department/Insurers

Please note that your legal department and insurers may need to see this letter and enclosed documents as soon as possible and it may affect your insurance cover and/or the conduct of any subsequent legal proceedings if you do not send this letter to them. I have sent this letter via email using the <<INSERT YOUR-EMAIL-ADDRESS>> email address <<OPTIONAL TEXT "that I have used in previous complaints correspondence. Please acknowledge receipt within 3 working days, or I will send a hard copy via recorded delivery.">>

## Disability and impact

I am disabled within the meaning of Section 6 of the Equality Act 2010.

<<INSERT a brief description of your relevant impairments and their impact and show that you have had them for more than 12 months - to meet the legal Equality Act definition of disability. An example of wording is "I have X condition and I use a manual/powered wheelchair".>>

<<INSERT optional wording - If you can prove your disability status, you may also wish to use the following text "I can provide Equality Act compliant evidence of my disability if required but requesting proof should not delay your response". >>

## Events giving rise to this claim

<<EXPLANATORY NOTE This is where you describe what happened and what the problem is. It does not have to be very legalistic, this is in your own words

If it is very complicated, you should try and keep to an outline of relevant details. It is usually easiest to do this in chronological order. If you have had previous contact with the organisation, then mention what you and they said and outcomes. If things have gone on for ages, or the same fail has happened multiple times, you may wish to summarise individual events into a single paragraph e.g. "between DATE and DATE I experienced X type of discrimination X times and Y type of discrimination Y times, I wrote X times and repeatedly received Y or Z response" rather than listing everything at this stage>>

## Reasons I am alleging fault

<<EXPLANATORY NOTE This section is literally cutting and pasting the correct bits of wording verbatim from the Equality Act law and Statutory Code of Practice wording themselves. The most difficult bit can be identifying which bits are relevant. You can still make changes in legal paperwork so you are not entirely bound by the text that you use at this stage, so make your best guess. More info about each of these kinds of discrimination are at:

* Summary: <https://www.equalityhumanrights.com/en/advice-and-guidance/disability-discrimination>
* Detailed Code of Practice: <https://www.equalityhumanrights.com/en/publication-download/services-public-functions-and-associations-statutory-code-practice>>>

## The law

<<EXPLANATORY NOTE: You can start each new bit of law in a new paragraph with any of the following:

* "In accordance with"
* "Pursuant to"
* "According to" >>

In accordance with Section 6 and Schedule 1 of the Equality Act 2010 I have the benefit of protection from discrimination as a disabled person.

<<INSERT ORG-NAME>> are providing a service and/or facility or public function for the purposes of section 29 of the Equality Act 2010.

<<EXPLANATORY NOTE: Delete out the unnecessary parts of the law and headings below, leaving just the direct quotes of the law (in blue) you are complaining about>>

#### Section 13 - Direct Discrimination

13 Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

#### Section 15 - Discrimination arising from disability

15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

#### Section 19 - Indirect discrimination

19 Indirect discrimination

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—

age;

disability;

gender reassignment;

marriage and civil partnership;

race;

religion or belief;

sex;

sexual orientation.

#### Section 20 - Reasonable Adjustments

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

(a) removing the physical feature in question,

(b) altering it, or

(c) providing a reasonable means of avoiding it.

#### Section 21 - Failure to comply with s20.

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

#### Section 26 - Harassment

26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

age;

disability;

gender reassignment;

race;

religion or belief;

sex;

sexual orientation.

#### Section 27 - Victimisation

27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

## Code of Practice

I direct <<INSERT ORG-NAME>> to the "Services, Public functions and Associations: Statutory Code of Practice" downloadable from: <https://www.equalityhumanrights.com/en/publication-download/services-public-functions-and-associations-statutory-code-practice>

<<EXPLANATORY NOTE The Code of Practice is routinely cited in LBA as it gives explanations of how the law is intended to be interpreted. You may wish to read the Code of Practice for yourself which is online at <https://www.equalityhumanrights.com/en/publication-download/services-public-functions-and-associations-statutory-code-practice> to find citations which relate to your case.>>

<<EXPLANATORY NOTE: Below are some commonly quoted parts from the Code of Practice highlighted in green, delete out the ones you don't need>>

#### Nature of Reasonable Adjustments Duty

Paragraphs 7.3 and 7.4 outline the intent and nature of the reasonable adjustment duty:

7.3 The duty to make reasonable adjustments requires service providers to take positive steps to ensure that disabled people can access services. This goes beyond simply avoiding discrimination. It requires service providers to anticipate the needs of potential disabled customers for reasonable adjustments.

7.4 The policy of the Act is not a minimalist policy of simply ensuring that some access is available to disabled people; it is, so far as is reasonably practicable, to approximate the access enjoyed by disabled people to that enjoyed by the rest of the public. The purpose of the duty to make reasonable adjustments is to provide access to a service as close as it is reasonably possible to get to the standard normally offered to the public at large (and their equivalents in relation to associations or the exercise of public functions).

#### Anticipatory Reasonable Adjustment

Paragraphs 7.20 and 7.21 explain that the reasonable adjustments duty is anticipatory:

7.20 In relation to all three areas of activity (services, public functions and associations) the duty is anticipatory in the sense that it requires consideration of, and action in relation to, barriers that impede people with one or more kinds of disability prior to an individual disabled person seeking to use the service, avail themselves of a function or participate in the activities of an association.

7.21 Service providers should therefore not wait until a disabled person wants to use a service that they provide before they give consideration to their duty to make reasonable adjustments. They should anticipate the requirements of disabled people and the adjustments that may have to be made for them.

Failure to anticipate the need for an adjustment may create additional expense, or render it too late to comply with the duty to make the adjustment. Furthermore, it may not in itself provide a defence to a claim of a failure to make a reasonable adjustment.

#### Duration of reasonable adjustments duty

Paragraph 7.27 shows that the reasonable adjustments is a continuing one

7.27 The duty to make reasonable adjustments is a continuing duty. Service

providers should keep the duty and the ways they are meeting the duty under

regular review in light of their experience with disabled people wishing to

access their services. In this respect it is an evolving duty, and not something that needs simply to be considered once only, and then forgotten. What was originally a reasonable step to take might no longer be sufficient, and the provision of further or different adjustments might then have to be considered.

#### Effectiveness and appropriateness of adjustment

Paragraph 7.35 shows that if a more suitable adjustment can be provided, a less accessible option is not acceptable:

7.35 The purpose of taking the steps is to ensure that disabled people are not placed at a substantial disadvantage compared with non-disabled people

when using a service. Where there is an adjustment that the service provider could reasonably put in place and which would remove or reduce the

substantial disadvantage, it is not sufficient for the service provider to take some lesser step that would not render the service in as accessible a manner.

#### Accessible Information formats

Paragraph 7.44 says that information should be provided in an accessible format:

7.44 The Act states that where a provision, criterion or practice places a disabled person at a substantial disadvantage, and this relates to the provision of information, the steps which it is reasonable to take include steps to ensure that the information is provided in an accessible format

#### Maintenance of provided adjustments

Paragraph 7.46 shows that if an auxiliary aid is provided, it should be properly maintained and a plan should be in place for unexpected failure:

7.46 Service providers should ensure that any auxiliary aids they provide are properly maintained. It would also be advisable to have in place contingency arrangements in case of an unexpected failure of an auxiliary aid. A failure to ensure the auxiliary aid is in operation may constitute a failure to make an

adjustment.

#### Services - Chapter 11

The definition of a service provider and information about service provision are covered in Chapter 11.

**What is a ‘service’?**

11.3 A wide range of services are covered by the Act, including permitting access to and use of any place which members of the public are permitted to enter. Among the services which are covered are those provided to the public, or a section of the public, by local authorities, such as toilet facilities; government departments and their agencies; some charities; voluntary organisations; hotels; restaurants; pubs; post offices; banks; building societies; solicitors; accountants; telecommunications organisations; public utilities (such as gas, electricity and water suppliers); services provided by bus and train operators, railway stations, airports; public parks; sports stadia; leisure centres; advice agencies; theatres; cinemas; hairdressers; shops; market stalls; petrol stations; telesales businesses; hospitals, and clinics. This list is for illustration

only and does not cover all the services under the Act.

11.4 A provider of services is anyone who is concerned with the provision of services to the public, or to a section of the public, whether or not for payment. Services include the provision of goods and facilities.

This list of allegations is not exhaustive and I reserve the right to effect amendments or additions should that prove necessary.

## Disclosure

<<EXPLANATORY NOTE: Disclosure is a posh word for legally demanding information or evidence from your legal respondent.>>

If <<INSERT ORG-NAME>> dispute this claim I will require provision of the following:

<<INSERT list of things you might want such as proof the org tried something, copies of policies and procedures, evidence of staff training, any records they hold on you or the incident>>

<<EXPLANATORY NOTE You can also add side-threats such as reporting organisation to appropriate regulatory or oversight bodies>>

## What I seek from this complaint

<<INSERT a brief outline - one sentence if you can - of what you want to achieve, in your own words>>

This will require:

<<INSERT bullet points of each thing the organisation will have to do to resolve this complaint which can include things like fixing the problem(s), a written apology (relatively rare, but sometimes works).>>

<<EXPLANATORY NOTE: Information about [Vento Bands in England and Wales](https://www.equalityhumanrights.com/en/publication-download/how-work-out-value-discrimination-claim-england-and-wales) and [Vento Bands in Scotland](https://www.equalityhumanrights.com/en/publication-download/how-work-out-value-discrimination-claim-scotland) are worth reading>>

Proposals for reasonable compensation. I refer you to the <<INSERT VENTO BAND>> as set out in the case of Vento v Chief Constable of West Yorkshire Police [2003] IRLR 102 (uplifted following 'Da ’Bell v National Society for the Prevention of Cruelty to Children 2009') where the Court of Appeal set out guidelines for how much compensation should be awarded in respect of injury to feelings. <<INSERT a brief explanation for why you chose the Vento band e.g. lower = one off incident, middle = multiple instances over a long time. Also outline what the impact on you of the failing has been e.g. stress, anxiety, specific detriment etc compared to a person who is not disabled by the relevant barrier.}>>

## Response timescale

Due to the very strict limitation period of the Equality Act 2010 I can only allow 20 working days for a full and satisfactory response (no later than <<INSERT DATE>> from <<ORG-NAME>>. If a satisfactory response is not received in this timeframe. I will issue a claim for disability discrimination without further notice.

<<OPTIONAL INSERTION. If you need a reply in a specific format e.g. text size or in a certain format such as Word document, specify that here with wording like "I need any reply to be in font size higher than 18pt" or "I need any reply to be in Word document format so I can fully access it with my assistive technology.">>

My contact details are shown at the top of this letter.

Yours faithfully,

<<INSERT YOUR FULL NAME>>