

# YOUR RIGHTS

## FACTSHEETS

**sia** spinal  
injuries  
association  
FOR LIFE AFTER SPINAL CORD INJURY



## HOW TO MAKE A CLAIM UNDER THE EQUALITY ACT

### What should I do before I start a court claim?

Before you start a court claim, you should be prepared to exchange information with the service provider and try to avoid the need for the case to go to a hearing. The court will expect you to act reasonably.

In some cases it may be possible to negotiate with the service provider to resolve the dispute. For example, the service provider may offer you money or an apology, or agree not to discriminate in the future. This can save you time and money, and spare you the uncertainty of bringing a court case. If your case concerns a failure to make a reasonable adjustment, you may be able to get the service provider to agree to the adjustment or, for example, to undertake and act upon a disability access audit.

If you do agree a settlement, this will be binding and you will not be able to change your mind and pursue your claim at a later date.

If you are unable to resolve the dispute, you need to think about going through conciliation (see section below.)

#### Initial complaint letters

Before you apply to the court, you should send a letter of complaint to the service provider. If your complaint is about a local branch of a company, then you can send the complaint both to the branch itself, and to the Head Office, to ensure that it will be dealt with at both levels.

Setting out the issues in a letter can help you to reach a settlement with the service provider – and even if you do end up making a court claim, the service provider's reply to your letter may give you information that helps your case.

#### **The time limit for applying to court is six months minus one day from the date when you allege you were discriminated against.**

You should send your complaint letter well within this deadline so that you have time to consider any response, negotiate with the service provider if appropriate, and decide whether or not you still wish to bring a claim.

Your letter should say what your disability is, describe the discrimination that you believe took place and the effect that it had on you.

If your claim is one relating to a failure to make reasonable adjustments, you will need to indicate what sort of duty the service provider has which is relevant in your case (for example, to remove a physical barrier to their premises so that you can access them as a wheelchair user); how this duty has not been met; and how this makes it impossible or unreasonably difficult for you to use the service.

Include details of any financial loss you have suffered. If, for example, a holiday company refused your booking and you had to book with another company at a higher cost, say so in your letter. You should enclose copies of relevant documents, such as booking forms or receipts, making sure that you keep the originals.

The letter should ask the service provider to acknowledge receipt promptly and to give a full written reply by a specified date. One month from the date of your letter will normally be a reasonable period for a full response. Say in your letter that you will issue a county court claim if the service provider does not reply by the date that you have given.

SIA can provide a sample letter of complaint under the Equality Act (EA), please contact the Advice Line for a copy (0800 980 0501).

#### **Conciliation**

If a settlement cannot be reached then you should consider conciliation. County Court judges will expect complainants to first attempt a settlement of their case through conciliation before bringing a case to court. In several recent cases, judges have ordered that conciliation is used and that a court hearing will only be allowed if conciliation proves unsuccessful.

#### **What is Conciliation?**

Conciliation is an opportunity for disabled people and service providers to come together in a one-off meeting and resolve cases under the EA. Conciliation is a process that offers parties in a dispute an opportunity to meet together, with the benefit of a conciliator, to try to reach a settlement out of court. The process usually takes about eight weeks. Discussing the issues and the context within which the dispute has arisen, gives both parties the opportunity to find workable agreeable solutions. The Disability Conciliation Service (DCS) ask parties in conciliation to use the concepts of the EA (such as 'reasonable adjustment' and 'less favourable treatment') to try and understand what has happened, and to find acceptable ways forward. Only the parties in conciliation decide whether any 'wrongdoing' has occurred and, if so, how it can be made right.

### **How do I access conciliation?**

The Equality and Human Rights Commission (EHRC) manages all the referrals to the DCS. The EHRC must first make sure that there is a legal basis for the case and that conciliation is the best way forward. Contact details for the EHRC can be found at the end of this document.

## **Pursuing a claim through the courts**

### **How much will it cost to bring a claim?**

If conciliation is unsuccessful you may want to consider making a claim through the county courts. Before you start, you need to think about court fees and the cost of any legal advice or representation.

You may be able to recover some of your fees and expenses from the service provider if you win your case. You also need to be aware that the court can order you to pay some of the service provider's costs and expenses if you lose your claim. In a fast track or multi-track case, these can be substantial – see 'What if I am unsuccessful?' below.

### **Legal advice and representation**

You do not necessarily need legal advice or representation to bring a county court claim. Most disability discrimination cases are allocated to the small claims procedure, which is designed to be quick, cheap and easy to use without advice from a solicitor. If you are claiming more than £5,000, you may wish to take legal advice. You can get free legal advice from the Disability Law Service, a Law Centre or Citizens' Advice Bureau.

### **Court fees**

Unless your income is below a certain level, you will have to pay a fee when you start your case. The fee varies according to the amount of damages you are seeking. At a later stage in the proceedings you will also be asked to pay an allocation fee and, if your case is allocated to the fast track or multi-track, you will also have to pay a trial fee (see 'Allocation' below).

A leaflet about fees is available from the county court and you can also get advice about fees from court staff.

### **How do I start a claim in the county court?**

You can get an N1 claim form from any county court or from [www.hmccourts-service.gov.uk](http://www.hmccourts-service.gov.uk). Court staff can help you to fill in the claim form but they cannot give you legal advice.



***The court will give you the claim form to serve on the service provider yourself, and you have four months from the date of issue within which to do so. Remember, the form must be with the court six months, less one day, from the date when you allege you were discriminated against.***

### **What can I ask for?**

You can ask the court for one or more of these remedies:

- a declaration that you have been discriminated against
- money (damages) for injury to feelings
- damages for any financial loss you have suffered
- interest on your damages
- an order that the service provider stops discriminating against you.

### **What happens after I file my claim?**

The court will send a copy of the claim form to the service provider. They must reply within 14 days from the date when they were 'served with' the claim form. They must reply by filing an acknowledgement of service or a defence with the court. If the service provider files an acknowledgement of service without a defence, it must then file a defence within 28 days of service of the claim form.

The court will send you notice that an acknowledgement of service has been filed. When the service provider files a defence, the court will send you a copy of the defence and an allocation questionnaire for you to complete (see 'Allocation', below).

If the service provider does not reply to your claim within the time limit, you can apply for the case to be decided in your favour. You should do this as soon as possible after the 14 days have passed.

### **Allocation**

If the service provider files a defence, the court will send you and the service provider an allocation questionnaire. This will help the court to decide which is the most appropriate track for your claim.

After you have returned your allocation questionnaire the case will be allocated to one of three tracks – the small claims track, fast track or multi-track – depending on the amount of damages you can expect to recover and the complexity of the issues.

As a general rule, cases are allocated as follows:

- small claims track: claims worth no more than £5,000 (and personal injury claims of no more than £1,000)
- fast track: claims worth over £5,000 but not more than £15,000
- multi-track: claims worth more than £15,000.

In practice, many disability discrimination goods and services claims are allocated to the small claims track on the basis that they are likely to be worth £5,000 or less and to be relatively straightforward. But this is not always the case. Even if you are claiming more than £5,000 the court can still decide to allocate your claim to the small claims track if both you and the service provider agree.

### **What happens before the hearing?**

The exact steps that you need to take before the hearing will depend on which track your claim has been allocated to. The court will send you a notice of allocation informing you of this. The notice will tell you what needs to be done and when it must be done by.

### **Witnesses**

If you and the service provider are saying different things about what happened, and you have a witness or witnesses who can support you, it is important that they give evidence at the hearing.

Occasionally, expert evidence will be needed but you will need the court's permission for this if your case is allocated to the small claims track. Expert evidence might be needed, for example, if you are arguing that a reasonable adjustment of installation of a ramp should have been made, and you need to prove that the cost of this would be reasonable. (An access consultant could give expert evidence as to this.)

The court will let you know in advance whether witness evidence is to be given in writing (that is, in a witness statement), orally at the hearing, or both. The court will usually send you directions telling you the date by which you and the service provider should exchange copies of your statements.

If you are calling witnesses, it is up to you to tell them when and where the hearing will take place.

### **Small claims track**

The small claims track is designed to allow claimants to conduct their own cases without a solicitor's help in a relatively informal setting. It is generally faster, cheaper and easier to use than the fast track or the multi-track.

Sometimes the court will hold a preliminary hearing. This may happen if special directions are needed, or if the judge considers that either you or the service provider have no real prospect of winning the case.

### **The fast track**

Directions will vary from case to case, but it is likely that they will set out a timetable for disclosure and inspection of documents and exchange of witness statements. Disclosure of documents usually involves listing any documents you have that support your claim or any that either undermine or support the service provider's claim. The service provider will be told to send you a similar list.

Once you have exchanged lists of documents with the service provider, you each have the right to make a written request to inspect the documents in the other's list.

You do not have to show the service provider any 'privileged' documents. These are documents that were created in contemplation of your court claim, and correspondence between you and your solicitor.

You will be given at least 21 days' notice of the trial. The maximum amount of time allowed for a trial in the fast track is one day.

### **The multi-track**

There is no standard procedure for multi-track cases but the judge is likely to give directions about disclosure and inspection of documents and exchange of witness statements.

The judge may decide to hold a meeting (known as a case management conference) to review the progress of the case and to decide what further steps need to be taken to prepare the case for trial.

The judge may also hold a pre-trial review to decide the timetable for trial. You will normally be sent notice of the trial date after any pre-trial review takes place.

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## **What happens at the hearing?**

### **Small claims track**

If your claim has been allocated to the small claims track it will normally be held before a judge in public. This means that members of the public can attend if they wish.

If you do not have legal representation, you can take along a lay representative to speak on your behalf. This could be a friend, relative or advice worker. If they charge you a fee you will not be able to recover this from the service provider.

The judge will give you an opportunity to speak. The service provider (or its representative) may then ask you questions. The judge may also ask you questions.

Next, your witnesses will give evidence and will be questioned by the service provider and the judge.

The service provider and its witnesses will then give its evidence, and you (or your representative) can ask it questions. Ask questions which will support your case, and do not ask about things that are not relevant to your claim. You should take a note of the answers.

At the end of the hearing, you should be given an opportunity to make submissions about the case and the law. You will need to explain to the court:

- the legal basis for your claim (ie what section of the EA you say the service or premises provider has breached)
- how this claim is supported by the evidence – that of you and any witnesses you have
- how the Code of Practice approaches the issue, and refer to any relevant parts of the Code
- any relevant cases on the same issue; and
- what you want out of the case – ie how much compensation you think that the court should award (the Disability Conciliation Service website [www.dcs-gb.net](http://www.dcs-gb.net) has some useful cases on this issue).

At the end of the hearing the judge will normally give a decision and brief reasons for reaching that decision. A written copy of the decision (an order, or judgment) will be sent to you after the hearing.

### **Fast track and multi-track**

If your claim has been allocated to the fast track or the multi-track, it will normally be held in public before a judge. You can represent yourself, or a solicitor or barrister may represent you. If you are unrepresented and the hearing is in public you can take along a friend or relative, but that person will not be able to speak on your behalf.

The judge will give you and the service provider (or your representatives) an opportunity to speak and to ask each other questions. Witness statements will have been exchanged before the hearing and witnesses are likely to be called in person to give evidence. The judge may also ask questions.

Judgment may be given either at the end of the hearing or at a later date.



## **Costs and outcomes**

### **What if I am successful?**

If your case is successful, the court can give you:

- a declaration that discrimination has occurred
- compensation ('damages') for any actual financial loss and for injury to feelings incurred because of the acts of discrimination
- interest on damages
- an order ('injunction') that the defendant stop discriminating against you.

### **Costs**

If you win your case in the small claims track, the court will order the service provider to reimburse you for any court fees that you have paid. The service provider will usually have to pay towards the travelling and other expenses of you and your witnesses to cover attendance at the hearing.

If you have paid any legal costs, these will generally not be recoverable. An exception to this is where you and the service provider agreed that the claim should be dealt with under the small claims track, even though it was worth more than £5,000, and the court consented. In this case you can normally recover some of your legal costs from the service provider, as well as the other costs referred to above.

If you win your case in the fast track or multi-track, you can normally recover some of your court fees, travel and other expenses, and costs of legal representation from the service provider.

### **What if the service provider does not pay?**

If the court orders the service provider to pay you damages or costs, and the service provider does not pay, you should ask the court to 'enforce the judgment' – that is, help you to get your money. The court will not do this unless you ask them to. Leaflets and forms about enforcing judgment are available from the court office.

### **What if I am unsuccessful?**

If you are unsuccessful you should expect to have to pay some or all of the service provider's costs. The procedure for assessing costs, and the amount that you are ordered to pay, will depend which track your case was allocated to.

### **Costs – small claims track**

If you lose your case in the small claims track, you will probably be ordered to pay the travelling costs and other expenses of the service provider and their witnesses to cover their attendance at the hearing. You will not normally have to pay the service provider's legal costs (assuming there are any) unless the court thinks that you have acted unreasonably.

If your claim was worth more than £5,000 but, with consent, was dealt with in the small claims track, the court is likely to order you to pay some or all of the service provider's legal costs, as well as the service provider's expenses of attending the hearing.

### **Costs – fast track and multi-track**

If you lose your case in the fast track or the multi-track, you will normally have to pay some or all of the service provider's legal costs, as well as their (and their witnesses') expenses of attending the hearing. This could cost you thousands of pounds.

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## **Appeal**

If you lose your case you may be able to appeal against the decision. Information leaflets and forms are available from the county court where your case was heard. You can appeal at the time of the decision but in any event, no later than 14 days from the date when you received the order setting out the decision.

You must have proper grounds for appeal. It is not enough simply to say that you think the judge made the wrong decision. You will need to show that there has been a serious irregularity in the proceedings or that the judge got the law wrong. If you are in any doubt about this you should seek legal advice.

## USEFUL CONTACTS

### **Equality Advisory and Support Service (EASS)**

Contact the EASS if you need expert information, advice and support on discrimination and human rights issues and the applicable law, especially if you need more help than advice agencies and other local organisations can provide.

FREEPOST Equality Advisory Support Service FPN4431

**T:** 0808 800 0082

**Textphone:** 0808 800 0084

**W:** [www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

### **Community Legal Service**

If you have a low income, you may be able to get funding from the Community Legal Service (CLS) – previously known as legal aid – to pay for a solicitor to draft your claim form, write letters and prepare your case. You may also be able to arrange representation at the hearing.

**T:** 0845 345 4 345

**Textphone:** 0845 609 6677

**W:** [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

### **Disability Law Service**

The Disability Law Service has over 30 years of experience in battling discrimination, and has won cases and consequential rulings that continue to benefit the lives of disabled people in this country. They can give legal advice

39-45 Cavell Street

London,

E1 2BP

**T:** 020 7791 9800

**@:** [advice@dls.org.uk](mailto:advice@dls.org.uk)

**W:** [www.dls.org.uk](http://www.dls.org.uk)

### **HM Courts Service**

Her Majesty's Courts Service (HMCS) is responsible for managing the magistrates' courts, the Crown Court, county courts, the High Court and Court of Appeal in England and Wales. They will be able to provide you with contact details for your local county court.

HMCS  
Customer Service Unit  
4th Floor  
102 Petty France  
London SW1H 9AJ  
**W:** [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk)

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### **Disclaimer**

This factsheet has been prepared by SIA and contains general advice only which we hope will be of use to you. Nothing in this factsheet should be construed as the giving of specific advice and it should not be relied on as a basis for any decision or action. SIA does not accept any liability arising from its use. We aim to ensure the information is as up-to-date and accurate as possible, but please be warned that certain areas are subject to change from time to time. Please note that the inclusion of named agencies, companies, products, services or publications in this factsheet does not constitute a recommendation or endorsement by SIA.

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## ABOUT SIA



The Spinal Injuries Association (SIA) is the leading national user-led charity for spinal cord injured (SCI) people. Being user led, we are well placed to understand the everyday needs of living with spinal cord injury and are here to meet those needs by providing key services to share information and experiences, and to campaign for change ensuring each person can lead a full and active life. We are here to support you from the moment your spinal cord injury happens, and for the rest of your life.

For more information contact us via the following:

Spinal Injuries Association  
SIA House  
2 Trueman Place  
Oldbrook  
Milton Keynes  
MK6 2HH

**T:** 01908 604 191 (Mon – Fri 9am – 5pm)

**T:** 0800 980 0501 (Freephone Advice Line, Mon – Fri, 11am – 1pm/2pm – 4.30pm)

**W:** [www.spinal.co.uk](http://www.spinal.co.uk)

**E:** [sia@spinal.co.uk](mailto:sia@spinal.co.uk)

Charity No: 1054097

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## PLEASE SUPPORT SIA



**SIA relies on fundraising, donations and gifts in wills to provide services that help spinal cord injured people rebuild their lives.**

With your help, we can provide the right support to spinal cord injured people and their families and friends so they can enjoy a full and independent life after injury. Your donation today will go towards changing someone's life.

I would like to give: £15 ☐ £20 ☐ £53 ☐ other amount £.....

### Method of payment

☐ I enclose a cheque/postal order/CAF voucher made payable to Spinal Injuries Association.

☐ I would like to pay by Mastercard/Visa/Maestro/Switch (delete as appropriate)

Card number

Start date

Expiry Date

Security Code

Signature

...../...../.....

Date

Name.....

Address .....

.....

Postcode ..... Tel no.....

Email address.....

Please gift aid my donation ☐

If you tick the box it means for every £1 you donate we can claim an extra 25p from the taxman, at no extra cost to you. You need to pay an amount of income tax or capital gains tax at least equal to the tax we reclaim from HM Revenue and Customs – currently 25p in every £1 you give.

Please send your donation to: FREEPOST SPINAL INJURIES ASSOCIATION or you can donate online at [www.spinal.co.uk](http://www.spinal.co.uk)

**Thank you for your support!**