



Making a complaint about treatment at work after brain injury

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Please help us to continue to provide free information to people affected by brain injury by making a donation at www.headway.org.uk/donate. Thank you.

Introduction

If you feel that you have been discriminated against or bullied in the workplace because of your brain injury, you may have a right to make a complaint. There are several stages involved in making a complaint about treatment at work, depending on how far you wish to proceed, although most issues can be resolved by talking openly with the person with whom you have a complaint against.

This factsheet has been written to help you with understanding the stages involved in making a complaint about treatment at work after brain injury. There are also useful services listed throughout that can help with resolving a complaint, and information about relevant legislations.

Grounds for complaint

The Equality Act (2010) protects employees with a disability in the following areas:

- Disclosing information in application forms
- Making arrangements for interviews
- Completing proficiency or aptitude tests
- Job offers
- Terms of employment
- Promotion
- Transfer and training opportunities
- Being dismissed or made redundant
- Discipline and grievances

If you feel that you have been discriminated against in any of these areas because of your brain injury, you have a right to make a formal complaint under the Equality Act. For more detailed information, see the Headway factsheet *A guide to the Equality Act 2010*.

It is advisable to start a complaint off by having an open discussion with your employer. An employer may not understand or fully appreciate the impact that a brain injury can have on work performance, and so you may need to have a discussion with them about this. You



may also need to explain to them that you require adaptations in the workplace to help you with your role, and that they have a legal duty to provide this under the Equality Act. For more information on suggested adaptations, see the Headway factsheet *Adaptations to the workplace - a guide for employers*.

It is important to be aware that an employer **can** legally dismiss you if you are unable to continue the job even with such adaptations having been made.

Remember, an employer may do something that, although you disagree with or dislike, does not in itself constitute grounds for complaint. On the other hand, an employer may do something that can be classified as 'indirect discrimination', where the discrimination is unintended but nevertheless abuses your legal rights under the Equality Act. If you are unsure about whether the employer's behaviour constitutes discrimination, you may find it useful to discuss your concerns with a friend or a colleague that works closely with you, or seek advice from the sources of support listed at the end of this factsheet.

Stages of making a complaint

Local resolution

If you are considering making a complaint you should start off by trying to talk directly to the person with whom you have a complaint. It is nearly always better to try this first, as employers do have a legal duty to accommodate for disabled employees' needs, and so they may likely try to resolve the dispute internally.

You might wish to start off by writing down details of the concerns that you have. Make sure to include dates and times of key events so that you have an accurate record of the nature of the complaint. This will be particularly useful if you do decide to take the complaint further later on.

You should try for a local resolution as early as possible, as you may be questioned about this later if you need to proceed further with the complaint. Your employer may already have a grievance procedure in place that you can follow to guide an internal complaints process; details of this will be available from an internal HR department or from a staff handbook.

Early conciliation

If you are unable to resolve the complaint through a local resolution, you should make contact with ACAS (Advisory, Conciliation and Arbitration Service) to discuss undertaking an early conciliation. ACAS will involve an independent conciliator, who will mediate between yourself and your employer to try and resolve the dispute. The service is free and can be accessed for up to a month (although this time can be extended if required).



You can apply for conciliation by contacting the ACAS early conciliation line on 0300 123 11 22. Alternatively, you can fill out an application form, available from the ACAS website using the following link: www.acas.org.uk/earlyconciliation.

ACAS has produced a document that explains the process of early conciliation in more detail. You can access this by clicking on the following link: www.acas.org.uk/media/pdf/o/g/Conciliation-Explained-Acas.pdf.

If a resolution cannot be reached through early conciliation, ACAS will provide a certificate that will be required for the next stage of making a complaint.

Employment tribunal

If you still feel that the dispute has not been resolved then you can take things to court through an employment tribunal. You generally cannot apply for an employment tribunal until you have discussed early conciliation with ACAS first (see previous section) although there are some exceptions to this rule; contact the ACAS helpline for more information on these exceptions. You will need the certificate that ACAS has provided at the early conciliation stage to initiate an employment tribunal.

There is a time limit of **three months** within which to raise a complaint at this level, although this time limit gets 'paused' during an early conciliation process.

Employment tribunals are legal procedures so you will need legal representation. You may therefore wish to seek legal advice prior to beginning an employment tribunal. Citizen's Advice or Citizen's Advice Scotland can provide free legal advice; details for these services, and other useful services that can help at this stage are listed at the end of this factsheet in *Sources of support*. Again, the ACAS helpline can offer information at this stage.

If you are in England, Scotland or Wales, you can apply for a tribunal online or by sending off a form. If you have difficulties with using a computer, you can alternatively use the 'talk-through' telephone service by calling 0300 123 1024. Further information is available from the following link: www.gov.uk/employment-tribunals/when-you-can-claim.

If you are in Northern Ireland you will need to apply by contacting the Industrial Tribunal and Fair Employment Tribunal. Further information is available from the following link: www.nidirect.gov.uk/articles/employment-related-tribunals.

The tribunal will give the employer an opportunity to offer their input to the case; if the employer accepts this offer, the case can proceed to a hearing level. If the employer does not accept, you may not be required to go through a hearing.



You are expected to bring evidence to a tribunal; this should include relevant documents such as dated letters or colleagues that can act as witnesses. Your employer will also be present at the hearing and they will provide their own evidence.

A decision may be reached at the end of the hearing or you might need to wait for a period of time for a decision to be reached; if this is the case you will receive a letter by post informing you of the hearing's outcome.

If the tribunal was successful, there are a number of possible outcomes, depending on the original complaint. For instance, you may be able to return to your job if you originally felt that you received an unfair dismissal, or you may be entitled to receive compensation.

You can apply for a reconsideration if the tribunal was unsuccessful. You must do this within **two weeks** of receiving the tribunal decision, and you must explain why you feel the decision should be reconsidered. If you think that a mistake has been made in the tribunal, you can contact the Employment Appeal Tribunal. For more information on this, visit www.gov.uk/appeal-employment-appeal-tribunal/overview.

Sources of support

Various sources of support and helpful telephone numbers are listed throughout this factsheet; however there are other services that might also be able to support you through the process of making an employment related complaint. Information and contact details of these can be found below.

- The Advisory, Conciliation and Arbitration Service (ACAS) offers free, confidential and impartial advice on all employment related issues. There is also a wealth of information on the website, and there is also a helpline that can offer confidential advice. ACAS can pursue disputes on your behalf (see section on Early conciliation). More information is available at www.acas.org.uk, or you can contact the helpline on 0300 123 1100.
- If you are a trade union member, you can contact your union representative for advice and support.
- Your local Citizens Advice or Citizens Advice Scotland can provide free and impartial advice. You can locate your nearest Citizen's Advice by using the search tool from the following link: www.citizensadvice.org.uk/about-us/how-we-provide-advice/advice/search-for-your-local-citizens-advice. For general online information from Citizens Advice, visit the following website: www.citizensadvice.org.uk/work/problems-at-work/what-help-can-i-get-with-a-problem-at-work. You can find localised information by selecting the country



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that you are in from the *Advice can vary depending on where you live* selection box.

- The Equality Advisory & Support Service is available in England, Scotland and Wales. You can telephone their helpline on 0808 800 0082, or you can use the online contact form available at www.equalityadvisoryservice.com/app/ask.
- Northern Ireland has its own separate dispute resolution procedure. You can find out more information from the Department of Employment and Learning (DELNI), or alternatively, more information is available at www.nidirect.gov.uk/articles/employment-support-information.
- Support in Northern Ireland is also available from the Labour Relations Agency which offers free, confidential and impartial advice on all employment rights issues. For more information, visit the LRA website www.lra.org.uk/.

More information on other aspects of returning to work is available in the following Headway factsheets, available from www.headway.org.uk/information-library:

- Adaptations to the workplace - a guide for employers
- Financial support when returning to work
- Returning to work after brain injury
- Returning to education after brain injury
- Self-employment after brain injury
- The Equality Act 2010
- Voluntary work after brain injury

To discuss any issues raised in this factsheet, or to find details of our local groups and branches, please contact the Headway helpline free of charge on 0808 800 2244 (Monday - Friday, 9am-5pm) or by email at helpline@headway.org.uk.

You can also find more information and contact details of groups and branches on our website at www.headway.org.uk/supporting-you.

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Website: www.headway.org.uk