

Equality Act 2010

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What You Need to Know About the Equality Act 2010

What is the Equality Act (EA)?

The Equality Act (EA) provides protection from discrimination, including a duty on your employer or education/housing/service provider to make reasonable adjustments, providing your OCD (and/or other mental or physical health conditions) meet the criteria of disability as detailed in the Act. The EA applies in England, Scotland and Wales while the Disability Discrimination Act 1995 or Special Educational Needs and Disability (NI) Order 2005 provide similar legal protection from discrimination in Northern Ireland.

The EA provides protection from discrimination from your employer (unless you're in the armed forces), your education provider, shops, banks, cinemas, hospitals, GPs, council offices, leisure centres, job centres and your housing provider. The EA defines the different types of discrimination which it protects the individual with a disability from, but this section of the Self-Advocacy Toolkit focuses on the duty to make reasonable adjustments.

How Does the Equality Act Define Disability?

The complex legal definition of disability in the EA is difficult to apply and depends on your particular circumstances rather than simply a diagnosis.

The EA defines a disability as having a physical or mental impairment that has **substantial** and **long-term adverse** effects on your ability to carry out normal **day-to-day activities**.

Substantial Adverse Effect: This means that the effect of your OCD/BDD or related disorder on your daily life must be more than minor.

Long-Term: This refers to an impairment which has lasted 12 months, is likely to last 12 months or for the rest of the individual's life.

Day-to-day Activities: These are those regular activities carried out by most people and include getting washed and dressed, shopping, preparing and eating meals,

doing housework, reading, using public transport and engaging in social activities. It may be that your OCD/BDD or related disorder does not have a substantial adverse effect on any single one of these activities but the effect on several of them adds up to an overall substantial adverse effect on your ability to carry out normal day-to-day activities.

But I'm Taking Medication/Having Treatment: If you take medication or have had or are having treatment which reduces the severity of your OCD/BDD or related disorder the impact of your 'impairment' should still be measured as it would be without it.

But I'm Not Disabled! You may not identify or want to be identified as 'disabled', but this is simply a legal definition or test that applies only to the EA. You do not have to be receiving benefits to meet the definition of disability under the EA.

What are Reasonable Adjustments?

The EA places a duty on your employer or education/housing/service provider to make reasonable adjustments in situations where a particular rule or practice, physical feature and/or lack of an auxiliary aid, is causing you a substantial disadvantage because of your disability compared to those without a disability.

The aim of reasonable adjustments is to help the disabled individual overcome barriers not faced by people who do not have disabilities. The duty to make reasonable adjustments arises when an employer or education/housing/service provider knows (or should know) that an individual is disabled.

So, broadly, if you are having severe difficulties at work or university or accessing a service as a result of your OCD/BDD or related disorder, providing your employer or education/housing/service provider is aware of your disability, they have a duty to make reasonable adjustments to help you overcome those difficulties.

Please note however that the duty is only to take 'such steps as it is reasonable to have to take to avoid the disadvantage' - an employer or education/housing/service provider need only take such steps to avoid the disadvantage as are reasonable to take in the circumstances.

It is worth considering what adjustments your employer or education /housing /service provider might make that would help you overcome the disadvantage you face at work, at college or accessing a service. The duty is on them to consider and make adjustments, however any reasonable adjustment proposed should be considered by your employer or education/housing/service provider and if they reject your request then they should provide the reasons for doing so. You cannot be asked to pay for the cost of any reasonable adjustments. Reasonable adjustments should not be time limited although they should be reviewed to ensure that they are proving effective in alleviating the disadvantage you face.

What is reasonable? The EA does not provide a definition of 'reasonable' as it depends on factors such as the size of your employer or other legal obligations your employer or service provider has to abide by.

Examples of Reasonable Adjustments: The adjustment needed will depend on the setting, the particulars of your OCD/BDD or related disorder and the practices that are putting you at a disadvantage because of your OCD, but here are some examples of possible reasonable adjustments in different settings:

In the workplace:

- Modifying performance-related pay arrangements
- Adjusting redundancy selection criteria
- Transferring the individual to fill an existing vacancy
- Making adjustments to premises
- Altering the individual's hours of work or training
- Allowing the individual to be absent during working or training hours for rehabilitation, assessment or treatment.

Services e.g. GP, Hospital appointments:

- Changing the times of appointments e.g. to the afternoon if mornings are difficult for you
- Changing the place where services are delivered
- Allowing more time for meetings/appointments
- Reducing the number of people in a meeting.

In housing – buying, renting or living in a property:

Adjustments in time frames for repairs

- Changing a policy or practice, including the terms of a tenancy agreement
- Providing assistance in applying for social housing through the local authority's choice-based lettings system.
- Changing the way your landlord communicates with you e.g. face-to-face meetings rather than letters.

At university:

- Use of a separate room for exams/assessments
- 25% extra time for exams/class tests
- Extended library loans
- Alternative forms of assessment
- Provision of reading lists well in advance
- Provision of a buddy, prompter, scribe
- Extension of coursework deadlines.

For further information on the Equality Act 2010 and reasonable adjustments in the workplace, housing and at universities please see the relevant resources on our website.

Requesting Reasonable Adjustments

What reasonable adjustments do you need?: You don't have to come up with suggestions as to what reasonable adjustments your employer or education /housing /service provider might make but as it's your OCD/BDD or related disorder you are probably best placed to both understand what is causing you difficulties and what needs to change to alleviate those.

The first step then is to identify what adjustments you feel need to be made by your employer or education/housing/service provider which will help alleviate the difficulties you face due to your OCD/BDD or related disorder. It might help to think about what aspects of your work/study environment or job/course you are struggling with and what adjustments might help to alleviate those specific difficulties.

- You could look at the employment, housing and university resources on the OCD Action website for ideas.
- You could talk to your university/college's Disability Advisory Service where one of their Disability Advisors should be able to sit down with you to draw up a Student Support Plan (SSP). Drawing up an SSP with a Disability Advisor can help you focus on the impact your OCD/BDD or related disorder is having on your studies and the Advisor can help you explore what reasonable adjustments might be put in place to help.
- If your OCD/BDD or related disorder is making it hard to stay in work, you could approach Remploy's Access to Work Mental Health Support Service who can carry out assessments to identify possible reasonable adjustments and draft work-based support plans.
- You could speak to your union or a Mental Health First Aider if your workplace has one.
- Your employer or education/housing/service provider may have human resources (HR) or disability policies that may detail how they should be helping you.
- You could speak to your GP or mental health professional about the difficulties you're having and explore with them possible reasonable adjustments. In employment situations, the mental health charity, Mind, suggests getting a letter from your doctor or mental health professional to confirm your mental health condition, how it is affecting you at work and how the reasonable adjustments you are requesting could help you.

How to Request Reasonable Adjustments

Once you've identified the adjustments that you feel will help to alleviate the difficulties you're facing with work/your course or accessing a service, and they seem reasonable, the next step is to approach your employer or education/housing/service provider to request them.

- If you're going to meet with your employer or education/housing/service provider check out **Worksheet 3 - Preparing for a Meeting/Appointment**. Don't forget to plan what you are going to say beforehand. Remember too that you could ask to take someone with you such as a colleague, union representative or advocate. You could always follow up a meeting with an email confirming what was discussed and agreed.
- If you're going to put your request in writing you could use our **Worksheets 8 or 9: Requesting Reasonable Adjustments**.
- However you decide to go about requesting reasonable adjustments, remember to be polite, positive and respectful but be assertive - your employer or education/housing/service provider has a duty to consider any request for reasonable adjustments which aims to alleviate difficulties you are facing because of your OCD/BDD or related disorder. It could be discrimination if they fail to make reasonable adjustments for you.
- Remember! Keep notes of all meetings and conversations with your employer or education/housing/service provider including dates, times and who said what along with copies of all correspondence.

Other Questions You May Have - Employment

Can I be asked health-related questions before I'm offered a job?

The Equality Act limits the circumstances when you can be asked health-related questions before you have been offered a job. The employer can only ask you health-related questions to help them do one of the following:

- Decide whether you are able to do an assessment (such as the job interview);
- Decide whether they need to make any 'reasonable adjustments' to the assessment process for you;
- Decide whether you can carry out a function that is essential (intrinsic) to the job;
- Monitor diversity in the range of applicants;

- Take positive action to assist disabled people;
- Assure themselves that, where the job genuinely requires the jobholder to have a disability, you have the disability.

I've Been Referred to Occupational Health - What is their Role?

Many people who contact OCD Action's Advocacy Service with employment concerns are often worried if their manager has referred them to their Occupational Health Department. You might be referred to Occupational Health if you've been off sick a lot or in response to you disclosing your OCD or related condition to your employer.

The role of Occupational Health is to assess your health to see if you are capable of carrying out your role and to advise your employer of any adjustments that might be made to support you in the workplace. These suggested adjustments should come out of discussions with you as part of your assessment. It is then up to your employer whether they agree to implement those suggestions or not.

If your employment contract includes a requirement for you to attend an occupational health assessment when requested to do so, then you must attend. If there is no such provision in your contract, not attending the assessment appointment may result in your employer questioning your capability to carry out your job or commencing disciplinary action, so it is usually better to attend.

Remember you have the right to see your occupational health report.

Self-Advocacy Worksheet 8: Requesting Reasonable Adjustments at Work

Your address

Name of your Line Manager/Human Resources (HR) Officer

Employer's address

Date

Dear (Name of your Line Manager/HR Officer),

Request for reasonable adjustments

I am writing to request adjustments to my work arrangements to alleviate the disadvantage I am facing.

Describe how your OCD/BDD or related disorder affects your work.

Make particular reference to the substantial disadvantage you are experiencing.

Under the Equality Act 2010, employers are under a duty to make reasonable adjustments for disabled individuals.

The duty to make reasonable adjustments has the purpose of addressing a situation in which a disabled person is placed at a substantial disadvantage, in comparison with persons who are not disabled. Any adjustments made must be reasonable to do and can take three forms:

- A change to policies, procedures or practices
- A change to the physical environment, and/or
- By providing additional aids or services.

I would like you to consider the following reasonable adjustments:

Explain:

The adjustments you need at work – If possible offer as many different options as you can.

How these would help you do your job better.

Make reference to and enclose a supporting letter from a mental health professional if you have one.

I would be happy to discuss this request in more detail, but it would be helpful to receive your response in writing within 14 days.

Yours sincerely,

Your signature

Your name

Self-Advocacy Worksheet 9: Requesting Reasonable Adjustments from a Service

Your address

Name & Role of Person Writing to (if known)

Name of Organisation

Organisation's address

Date

Dear (Name of Person Writing to - if known),

Request for reasonable adjustments

I am writing to ask you to make reasonable adjustments for me under the Equality Act 2010.

Describe how your OCD/BDD or related disorder affects you accessing services. Make particular reference to the substantial disadvantage you are experiencing.

Under the Equality Act 2010, service providers are under a duty to make reasonable adjustments for an individual who is at a substantial disadvantage due to their disability. Any adjustments made must be reasonable to do and can take three forms:

- A change to policies, procedures or practices.
- A change to the physical environment, and/or
- By providing additional aids or services.

I would like you to consider the following reasonable adjustments:

Explain:

The adjustments you need to be able to access the service -

If possible offer as many different options as you can

I would be happy to discuss this request in more detail, but it would be helpful to receive your response in writing within 14 days.

Yours sincerely,

Your signature

Your name

What to do if Your Request for Reasonable Adjustments is Refused

If your employer or education/housing/service provider refuses to make the reasonable adjustments you have requested, they should give you reasons for doing so.

If you have asked for reasonable adjustments in a meeting and your request has been refused it is worth making the request formal by putting it in writing, as this may force your employer or education/housing/service provider to put their reasons in writing, which provides you with necessary evidence if you choose to seek advice. In any event, always make a note of any verbal responses.

Make sure you understand what the reasons are for your employer or education/housing/service provider refusing your request as you may want to challenge their reasons or negotiate different adjustments.

It is worth getting advice on what to do next from your union representative or through an advice service such as Advisory, Conciliation and Arbitration Service (ACAS) for employment issues; your local Patient Advice and Liaison Service (PALS) for local health service issues or your local Citizens Advice Bureau (CAB) or the Equality Advisory Support Service (EASS) for all issues.

Broadly, there are 3 possible options open to you:

- *Informal route* – try to resolve the issue by talking informally with your employer or education/housing/service provider. It is often better to start off with the informal route as there may be a genuine misunderstanding.

- *Formal route* – you may want to raise a formal grievance/complaint using your employer's grievance or your education/housing/service provider's complaint procedure.

Don't forget you could use the **Worksheet 7 – Complaint Letter Writing Worksheet** in the Self-Advocacy Toolkit for ideas as to how to lay out a letter.

If you are dissatisfied with the response you receive to your complaint letter remember you can then complain further to an external body such as an ombudsman.

If you are dissatisfied with the outcome of your grievance your employer should provide you with the opportunity to appeal. You can find some guidance on how to do this on the ACAS website.

- *Legal route* – you may want to consider bringing a legal claim and there may be time limits on doing so, so please seek legal advice as soon as possible.

Contact OCD Action's Advocacy Service for support: 020 7253 5272 /
advocacy@ocdaction.org.uk

Should I Disclose my OCD?

Whether you choose to disclose or not, it's essential you understand that if you do not disclose your disability to your employer or education/housing/service provider then you may not be protected from discrimination by the Equality Act and the duty to make reasonable adjustments does not apply.

Deciding whether to disclose your OCD is a very personal decision and one where it might be useful to consider the options by getting some advice and looking at the possible pros and cons. You may feel that there is no reason to disclose your condition as it is not relevant and will not interfere with your work/studies/accessing services. Perhaps you have concerns about being rejected by an employer or college/university or that assumptions will be made about your ability to do the job/course, or that you will not get promoted.

Although negative attitudes certainly do exist, there is a strong argument for telling your employer or education/housing/service provider if you have a disability. Many employment agencies and advisors recommend disclosing a disability because it is a proactive, empowering approach that helps you to set the agenda. It also gives you the opportunity to present a disability confidently and positively, rather than as something that should be concealed.

An employer or education/housing/service provider can only ask questions about any reasonable adjustments that need to be made and are not entitled to quiz you about personal details and history.

In some situations, it can help to try to keep the focus on your ability rather than your disability. For example, some employers are keen to employ disabled people - look out for the disability confident symbol on job advertisements - this means that an employer has made some commitment to employing disabled people.

Disclosing - the Pros

- It can be very stressful to be in a situation where you feel you have to hide an illness, and this could make you feel worse.
- By disclosing, you give your employer or education/housing/service provider the opportunity to help and support you. Problems at work or in education can then be seen as a result of your illness rather than of poor performance.
- By disclosing, you ensure that you have certain protections under the Equality Act (EA). If you have not disclosed, you may have problems accessing your rights under the EA.
- If you choose to disclose, you are setting the agenda and are able to portray your OCD in the most positive way you can and counter any unproductive stereotypes that your employer or education/housing/service provider could come across if s/he found out that you had the condition.
- Tackling OCD can be challenging and getting people on your side can make a massive difference by helping you to feel that you're not facing it alone.
- Your employer may be happy to 'up' their intake of employees with disabilities - it looks good on their books!
- You are likely to feel more empowered and confident if you are accepted into a job or onto a course where you know that your employer or education provider is aware of your condition and is seeking to make adjustments to help you.
- Your disability information is confidential - your rights are protected under the General Data Protection Regulation (GDPR) 2018 and if you disclose, you can remind your employer or education/housing/service provider of their obligation to keep this information confidential.

Disclosing - the Cons

- Discrimination against people with any mental illness is still too common and you may feel labelled by your disability.
- Your long-term career goals may be affected, if your employer/education provider think you may become ill at some point.
- You may not see your OCD as a disability even if the law does.
- If your employer or education/housing/service provider is not familiar with OCD or related disorders, they may be nervous of you and treat you differently.

- Information may be shared inadvertently or otherwise. (It is worth checking the privacy/ confidentiality policy of your intended employer or education/housing/service provider). If information is spread about your condition without your consent your employer or education/housing/service provider may be in breach of the GDPR 2018.

Top Tips for Disclosure

- o Be as clear and as confident as you can be about explaining your condition - do it in layman's terms and don't blind them with science!
- o If it helps, take in a pre-prepared statement or fact sheet about the condition (OCD Action can help here).
- o Think about the skills, abilities and experiences you have gained as a consequence of managing your OCD and major on them.
 - o Do not assume that your employer, course tutor or service provider will have a negative attitude towards you because of your OCD - they may not.
- o If you are unsure about what you need to disclose, you can speak to a Disability Employment Advisor at your local job centre, the Disability Advisory Service at your place of study or OCD Action's Helpline: 0845 390 6232.
- o If it helps, take in a pre-prepared statement or fact sheet about the condition perhaps use an article, blog post or website that explains it well and say: 'read that - it's me'. It takes the pressure off of explaining it perfectly when you're anxious.
- o When disclosing your OCD to an employer or university/college try not to be emotive but factual - preparing in advance what you're going to say might help with this.
- o Don't go on at great length - remember your employer or university should only ask you questions related to your OCD and how it will affect your work or studies not other personal questions. For example, you don't need to share the content of your obsessions.
- o Think about disclosing your OCD or related disorder at the point when you apply for a job or university/college course as the duty to make reasonable adjustments applies to all aspects including the application and selection processes.

**Top
Tips**

Disclosing Your OCD to Your Family and Friends

Personal Tips from the Community

We asked individuals how they went about disclosing their OCD/BDD or related disorder to friends and family and they gave us the following top tips:

- o I tend to use humour when telling anyone!
- o I'm brutally honest because I'm quite resilient and happy to talk about my experiences. The rule of thumb is this: if you can trust your friends, family & employer with disclosure, then you clearly feel comfortable with them. If you feel uneasy though, explore WHY that is.
- o I told my husband about my intrusive thoughts towards our twins by first explaining to him intrusive thoughts are the OPPOSITE of your moral values and they go for the thing you most care about: as a mum, my core value is "keep my children safe", so OCD went for that.
- o I just texted my sisters and told them what I was going through (kind of) but told them I wasn't ready to talk about it yet. I've gradually opened up more and more. My boyfriend knew without me telling him and it was him who helped me realise it wasn't anything to be ashamed of.
- o I told my last manager after over a year of knowing her, she was so supportive and even now she checks in to see how I am!
- o Think about those closest to you, and who you believe will be able to support you, and share your journey, because it will be tough, and you will need someone to fight your corner who is completely non-judgemental
- o I used to just refer to it as having a mental health disorder, I didn't say what it was. Now though I like people to understand that I have OCD and feel more comfortable that they know before I tell them anything else about myself!

So, go on - take the plunge! You might find that sharing your secret reduces the burden of having to deal with OCD/BDD or a related disorder on your own.