

## GUIDANCE NOTE

### **IMPORTANT - PLEASE READ CAREFULLY:**

This note summarises some common questions relating to disfigurement equality at work in England and Wales as at **August 2024**. It relates to the work context only, not to the provision of goods or services or to other contexts. It gives a general overview **but is not comprehensive and is for guidance purposes only. You should always seek legal advice on your particular circumstances.**

### **I have a visible difference. Am I protected from discrimination at work?**

The law doesn't use the language of 'visible difference'. But you might have the right not to be discriminated against as a disabled person if you have an impairment (such as a condition or injury) which:

1. has a substantial adverse effect on your ability to carry out normal day-to-day activities (or to participate fully and effectively in working life on an equal basis with other workers); or
2. Consists of a [severe disfigurement](#). This (2) applies even if your disfigurement has no impact on what activities you can do, or on your mental health.

In either case, it must have lasted or be likely to last for at least 12 months (or for the rest of your life). Conditions which come and go may still be included.

Since you are not required to show the effect a severe disfigurement has on your daily activities, the rest of this guidance note will focus on the second of these options, the 'severe disfigurement' part of the law. But for further information about point 1, please click [here](#) to go to the Citizens' Advice Bureau website page. Please do note that different definitions of disability may apply in other contexts – e.g. for the purpose of qualifying for some social security benefits.

### **What is a 'disfigurement'? Does my condition count?**

'Disfigurement' could include various conditions or injuries which affect your appearance. This might include scarring, birthmarks, limb or postural deformation (including restricted bodily development), diseases of the skin and other types of conditions. Whether someone has a disfigurement is decided on a case-by-case basis. What is important is not whether you've got a particular condition but *how that condition appears in your case*.

Unremoved tattoos and piercings for non-medical purposes are not disfigurements.

The visible effects of NF1 - such as a plexiform tumour or a significant number of smaller skin tumours or café au lait marks - could count as a disfigurement, but remember to consider whether it is 'severe'. Remember also to consider whether any other possible features of NF1 (such as a learning

difficulty, for example) could amount to a disability. Take [legal advice](#) on how this applies in your case.

The visible effects of NF2 – such as a significant number of schwannomas or café au lait marks on the skin – could count as a disfigurement, but remember to consider whether it is ‘severe’. Remember also to consider whether any other possible features of NF2 (such as hearing loss, for example) could amount to a disability. Take [legal advice](#) on how this applies in your case.

## How do I know if my disfigurement is ‘severe’?

Whether a particular disfigurement is *severe* involves weighing up several factors, including:

Factors to take into account	Sample questions to consider
Nature of the disfigurement	What does my condition look like? How unusual is it?
Prominence of the disfigurement	How much does my condition stand out? How visible is it? Is it visible from a distance as well as close up? Can it be seen through clothing? Does it affect my facial expressions or create unusual asymmetry? Do other people point out my condition?
Size of disfigurement	How big is it?
Location of disfigurement on body	Is it somewhere on my body which is more likely to be seen, such as my face / neck / hands?
Impact on you	How does it affect me emotionally? Do I try to hide it? Has it affected my life choices or lifestyle? Does it impact my relationships? (Note that you are not required to show the effect a severe disfigurement has on your day-to-day activities, however it could assist with assessing severity)

None of these factors are likely to be decisive on their own, and some factors might carry more weight in some cases. You should still seek [legal advice](#) even if one or more of these factors are not satisfied in your case.

## Do I need to have an employment contract to be protected?

Not necessarily. The Equality Act 2010 applies to various categories of work situation including:

- Employees (whether or not their contract is in writing)
- Job applicants
- Former employees
- Workers under a contract personally to do work
- Some contract / agency workers
- Apprentices
- A number of other specific categories.

However, not everyone will be covered. For example, depending on the nature of the working relationship, some self-employed people may not be protected at work by the Equality Act 2010. Your [legal adviser](#) will be able to help you understand how this applies to your work situation.

## If I have a qualifying severe disfigurement, what rights do I have?

There are various rights under the Equality Act 2010, including (in summary form only):

- not to be treated less favourably because of a severe disfigurement (known as ‘direct discrimination’)

EXAMPLE: someone is moved away from a front-of-house role to a lower-paid, back-office job by their employer because of severe disfigurement. A real or hypothetical person without a severe disfigurement would have been treated differently.

- not to be treated unfavourably without justification for a reason arising from severe disfigurement (known as ‘discrimination arising from a disability’).

EXAMPLE: a person with a severe disfigurement is given an absence warning for taking time off to attend medical appointments related to the disfigurement. As a result of the warning, the person is prevented from applying for promotion. This could be discrimination unless the employer can justify it.

- not to be disadvantaged by a policy or practice which the employer applies to everyone but which puts a person with a severe disfigurement (and other people with severe disfigurements) at a particular disadvantage compared with other people, and the employer can’t justify this (known as ‘indirect discrimination’)<sup>1</sup>

EXAMPLE: an organic food retailer bans all its staff from wearing make-up at work to promote its ‘back to nature’ brand image. This is very uncomfortable for a staff member with a severe skin disfigurement, and is more likely to disadvantage people with the disfigurement than others. This is likely to be discrimination unless the employer can justify this policy.

- where certain aspects of work (including policies and practices of the employer and certain features of its premises) place someone with a severe disfigurement at a substantial

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<sup>1</sup> As of 1 January 2024, indirect discrimination can also occur where a person without a relevant protected characteristic suffers the same disadvantage as those with that protected characteristic. In the given scenario, this might enable a staff member with a moderate disfigurement to claim too if they share the same disadvantage as colleagues with severe disfigurements.

disadvantage compared with other people, the right to have reasonable adjustments made to avoid that disadvantage. For example, the adjustments made might sometimes include changes to certain job duties, working patterns or premises. This right applies where the employer knows (or reasonably ought to know) that the person has a qualifying severe disfigurement (disability) and is being placed at this substantial disadvantage.

EXAMPLE: someone with a facial disfigurement finds it stressful having their photograph taken and displayed but their employer requires everyone to have a photo on their security pass, website and email header. In some circumstances, the employer might need to make an adjustment to allow this person to bring a recent photo from home instead, or to waive the need for an email or website photo.

- not to be harassed because of, or in connection with, a severe disfigurement. Harassment is where unwanted behaviour is either meant to, or has the effect of, violating someone's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment. Where the effect, rather than the purpose, of the behaviour is relied on, it must be determined whether it was reasonable for the behaviour to have that effect on you.

EXAMPLE: someone with a severe disfigurement is called offensive names related to their severe disfigurement by colleagues

- the right not to be victimised. Victimisation is being subjected to a detriment because you do (or are suspected of doing or being about to do) certain things, such as complaining about discrimination or helping someone else who has been discriminated against.

EXAMPLE: someone with a severe disfigurement is demoted because they stood up for their rights under equality law at work.

- Note that some of these rights may sometimes also apply where the discrimination you are subjected to is based on the severe disfigurement of someone that you are associated with (e.g. a family member), or where it is based on the perception that you have a severe disfigurement. See [below](#).

Your [legal adviser](#) will be able to explain the detail of the rights relevant to your particular situation. Due to strict time limits that apply to any claims of discrimination, seek legal advice without delay. If you would like to read more about types of discrimination in general terms, you can visit the Citizens Advice Bureau website [here](#). Or to read more about the situations when an employer may be able to justify potentially discriminatory actions, you can visit the Citizens Advice Bureau pages [here](#).

## If I've been discriminated against, what should I do?

As is the case with any workplace issues, you have the option of raising the matter informally with your supervisor in the first instance. Often your employer will have internal formal processes (such as a grievance procedure) which can be used to raise concerns. This may be the best route for many problems, as it can bring a quick resolution. Often, bringing a grievance may be advisable to avoid a

particular type of compensation reduction if you later bring a successful legal claim. However, do still seek [legal advice](#) without delay, so your adviser can ensure that relevant time limits for legal claims do not expire during the grievance process. When you speak to your [legal adviser](#), it might be useful to have a copy of any relevant company policies to hand.

If this doesn't work or isn't possible in your case, your legal adviser may discuss the possibility of you bringing a legal claim. Most claims relating to discrimination at work are brought in the Employment Tribunals. This is a type of court which hears many employment disputes.

Before a claim is brought in the Employment Tribunal, you would first need to contact ACAS (The Advisory, Conciliation and Arbitration Service). ACAS is a free conciliatory body which aims to resolve disputes outside of the Tribunal. The ACAS process can run alongside any grievance that might already be ongoing. Once the ACAS conciliatory period comes to an end, you will be issued with a Certificate which will then allow you to submit a claim to the Tribunal. At this stage you are under no obligation to pursue a claim. However, **do still seek [legal advice](#) without delay, so your adviser can ensure that relevant time limits for legal claims do not expire during the process.**

If your claim goes to an Employment Tribunal and you win, you may be entitled to a remedy such as compensation for losses arising from the discrimination (along with injury to feelings to reflect the hurt caused), a recommendation or a declaration. However, this depends on what has happened and on your individual claim. This is something to discuss with your [legal adviser](#) before deciding on a course of action.

There are short timescales within which many claims (including discrimination claims) have to be brought, so always seek [legal advice](#) **without delay**.

### **I don't have any proof. What if it's my word against theirs?**

This is a common worry for many people, because most people who bring a claim aren't able to produce documentary proof showing expressly that a particular negative treatment was because of their severe disfigurement. And few employers openly admit discriminatory intentions. But this may not always be needed for a successful claim. For example, if it appears that you have been treated less favourably because of a severe disfigurement in that something has happened for no good reason, your employer may have to explain why it happened. The legal rules on proof are complex but your [legal adviser](#) will be able to explain how they apply to your situation.

### **I don't think my visible difference is a severe disfigurement. What are my options?**

Even if you don't have a severe disfigurement, you may still have other legal rights that can help you.

One possible route is to show that, although your visible difference is not a severe disfigurement, the person discriminating against you perceived it to be. For example, if you were removed from a customer-facing role because of your employer's perception of your visible difference, you may still be able to bring a discrimination claim under equality law.

Alternatively, there are other types of rights which may apply in different contexts without needing to show a severe disfigurement or discrimination – such as the right not to be unfairly dismissed, the

right not to be subjected to a course of bullying, the right not to suffer certain detriments at work for particular reasons, etc. These and other rights will depend on the factual context. Your [legal adviser](#) will be able to consider all possible rights and routes which might be relevant to your situation.

So, if you feel badly treated and you think that this is due to your visible difference, you should still take [legal advice without delay](#) even if you think your visible difference would not be a severe disfigurement.

## **I've been treated badly because someone close to me has a severe disfigurement. What can I do?**

You may still be able to bring a discrimination claim. Some rights under the Equality Act 2010 can apply where the discriminatory treatment you have suffered relates to the severe disfigurement of someone you are *associated with*, such as a member of your family or a close friend. Seek [legal advice](#) without delay.

Also note that employees with caring responsibilities may have the right to unpaid leave in some situations. You can find further information about this [here](#).

## **What is the duty to make reasonable adjustments?**

As set out [above](#), where an employer knows (or ought reasonably to know) that a worker has a disability and is being put at a substantial disadvantage compared with other people by some kind of practice or physical feature of the premises, it must make reasonable adjustments to avoid the disadvantage. What is reasonable is determined on a case-by-case basis and might be influenced by factors including:

- How well the adjustment would have worked
- How practicable the adjustment is / was
- The costs of making the adjustment, and the extent to which it would disrupt your employer's business
- The employer's resources (a well-funded employer might be required to do more to meet their duty) and whether financial assistance is available to them
- The nature and size of the employer's business

It is very useful for the worker with the severe disfigurement to have a say about any proposed adjustments. What is difficult for one person may not be a problem for another and not everyone will need, or want, reasonable adjustments for looking different. But note that your employer does not necessarily have to agree to all of your requested adjustments, and may sometimes suggest alternatives. Seek [legal advice](#) without delay if you feel your employer is being unreasonable in refusing adjustments.

## **What kind of adjustments might be appropriate for someone with a severe disfigurement?**

This very much depends on the context and the individual's preferences. Some examples appropriate for some people with severe disfigurements might include:

1. Adjustments to any particular aspects of the role which an individual finds difficult due to visible difference. Examples which some (but certainly not all) people might find difficult are public speaking commitments, being videoed, or networking events meeting new people. Supporting the worker with these aspects, or adjusting the job content slightly to reduce the need for these aspects, could be considered if required.
2. Adjustments to recruitment processes to remove video interview requirements.
3. Removing requirements for the worker to have a photograph at work e.g. on email headers or work social media profile. If photographs are essential, could the worker be allowed to bring one from home?
4. Support the worker with any changes to their workstation e.g. alterations to lighting may make some workers feel more comfortable.
5. Time off (and perhaps funding) for the individual to access specialist external training, if desired, to further social strategies related to visible difference.
6. Flexible working – e.g. flexible start and finish times to avoid busy public transport, breaks to touch in camouflage make-up or apply medication, or the ability to work from home during a flare-up.
7. A mentor that the individual can speak to confidentially at work if problems arise.
8. Support around any information processes to colleagues – this may be relevant when a worker first joins or after a change in their appearance.
9. Adjustments to uniform / grooming requirements. Sometimes individuals may prefer a uniform which covers up certain areas of their body (e.g. a long-sleeved top rather than a short-sleeved top, or thick tights rather than socks), or a uniform of a different colour to hide flaking skin. Loose clothing can be helpful for people with some conditions. Requirements to wear make-up (or rules preventing the same) can also be difficult for some employees with a visible difference and should be adapted if required.
10. Adjustments to any Teams / Zoom policy to allow the individual to have their camera off if they wish.

Again, these are examples only and assumptions should be avoided. If you have a physiotherapist/occupational therapist, they may be able to suggest adjustments appropriate to your context. If your condition also meets the general definition of disability, the duty to make reasonable adjustments should be considered more widely too.

## **If I apply for a new job, do I need to disclose my disfigurement on my application?**

Not always. Prior to deciding who to offer a job to, an employer shouldn't usually ask health-related questions (although there are some exceptions when this is permitted).

One permitted exception when employers can ask health questions during recruitment is when the employer needs to ask about any adjustments required for interview. If you need any adjustments during the recruitment process related to your disfigurement, you may need to disclose your disfigurement on the form.

Another permitted exception is where an employer needs to monitor applicants as part of its diversity commitment – but information obtained for this reason should then not be taken into account in the recruitment process itself. For detail about the other occasions when it's OK for an employer to ask about your health before offering a job, click [here](#) to read the guidance on this point.

Some job applicants *choose* to disclose a disfigurement. There probably isn't one 'right' approach here and it is more about what feels most comfortable or appropriate for you and your situation. Some people may feel more comfortable on the day of interview if they have mentioned their disfigurement in advance. Some may use it as an opportunity to explain that their disfigurement doesn't hold them back (perhaps via a small familiarisation video). And some may choose to disclose in order to use a guaranteed interview scheme (if available). Others may feel that disclosing before interview makes their appearance, rather than their skills, too much of a focus and that this may count against them.

If you do choose to volunteer information about your disfigurement (as opposed to answering permitted questions such as those set out above), unless a guaranteed interview scheme applies, we usually suggest that you wait until after you are shortlisted for interview before doing so. This is so that you can be clear that disclosing your visible difference on your application form has not affected or reduced your chance of being interviewed.

Once a decision to appoint has been made in principle, some employers may make a job offer conditional upon satisfactory answers to relevant health checks (often via a medical questionnaire). These should be answered honestly. The employer must not use this information as a basis for discriminating against you.

## **Sometimes customers or suppliers from outside my company verbally abuse me because of my visible difference. What can I do?**

We should all be able to do our jobs without being abused. Every situation depends on context, so it is a good idea for all staff to familiarise themselves with the employer's policies and procedures in advance of any situation arising. Subject to that, we suggest that if you are subjected to verbal abuse at work by a third party:

- Remove yourself from the situation to a place of safety. If you can't do that, attract the attention of a trusted colleague to support you.



- If you feel comfortable and safe doing so, you could tell the person calmly that you find their comments offensive and ask them to stop. However, this is a personal decision and you should not put yourself at risk either physically or emotionally in doing this. It is not your responsibility to confront other people's unacceptable behaviour.
- As soon as possible, tell your manager or someone from HR what happened. If you can't speak to someone straight away, make a note of what was said to remind you.
- Think about whether there are any steps which your employer could take to prevent a repetition. This could include displaying signs setting out the company's standards on respect at work, taking steps in relation to customers who breach these standards, and increasing safety and support procedures.
- If your employer knowingly puts you at risk of abuse or does not take your concerns seriously, seek [legal advice](#) without delay.
- If you believe the verbal abuse was motivated by hostility or prejudice towards you because of your severe disfigurement, it may constitute a hate incident or even a hate crime. These can be reported to the police. See the Citizens Advice Bureau website [here](#).

### Why is severe disfigurement a disability?

Many people with a severe disfigurement do not feel that the word 'disabled' reflects them. This is often because looking different does not necessarily impact what they can do and this may feel like a difficult fit with the word 'dis-abled'. Societal perceptions of disability often tend to focus on function, not appearance.

There is, however, another way to understand the word 'disabled'. This is known as the social model of disability. This means that someone is 'disabled' not by the functioning of their body, but by society. If society is designed around people *without* impairments, this creates barriers – and disability - for those of us *with* impairments. These barriers can be physical barriers (such as staircases, which often hinder people with mobility impairments) but they can also be attitudinal barriers (such as stereotypes). Someone with a visible difference could be disabled by stereotypes of beauty and negative media portrayals of visible difference, even though their visible difference does not limit what their body can do. As an example of a stereotype in action, try writing a list of all the movies where the villain has visible scars...you will need a large piece of paper!

So, under the social model of disability, it is society which places barriers on a person, not the person's impairment. The responsibility is therefore on society, and all of us living in it, to change this. There are some interesting short videos on You Tube which explore this in more detail.

### Where can I get legal advice?

Below is a list of organisations which may be able to offer guidance or free legal advice on this topic. Always check whether you will be charged for the advice in advance.

- [Citizens Advice Bureau](#)
- [Equality Advisory and Support Service](#) helpline
- Local law centres (find your local one [here](#)).
- EHRC provides guidance and support on discrimination issues <https://www.equalityhumanrights.com/en>

- [ACAS](#) also have some useful guidance for employees in the workplace

Alternatively, you could consult a [solicitor local to you](#) who specialises in employment law (this is likely to be chargeable - always check the cost basis before doing so).

## Is there any help with the cost of getting advice?

If your legal adviser suggests that you should bring a claim, you should also discuss the cost implications of this together. You could check whether any of the following would be available to you:

- Legal aid funding. There is an eligibility checker on the government website [here](#). Note, though, that legal aid is not usually available to cover representation at the employment tribunal hearings. If you are a member of a Trade Union, check what help or representation they can offer.
- If you have any insurance with legal expenses cover you may wish to check whether you can get legal advice paid for under that, but be sure to understand how this works, any requirements of the insurers and any impact on your premiums going forward.
- Check whether any legal advice centres near you offer free help to people in your situation. There is also the [Free Representation Unit](#) and [Advocate](#) which can sometimes offer an advocate to attend an Employment Tribunal hearing to represent you.
- If you bring a claim, it is possible to represent yourself in the Employment Tribunals. However, unless you have the time and confidence to research the law, this may not be for you. Some guidance on representing yourself can be found on the Citizens' Advice Bureau website [here](#).
- Some law firms offer a 'no win no fee' service, or fixed fees. Be sure to understand how this works and the charges which you could be responsible for.

## I am an employer. How should I support one of my workforce who has a disfigurement?

This guidance is prepared with questions affecting individuals, rather than employers, in mind. Click [here](#) to read our model of good practice for employers in creating appearance inclusive workplaces.

The following websites contain general guidance on various employment law topics for employers:

<https://www.acas.org.uk/advice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

And there are numerous (paid) subscription helplines for employers with HR queries.

## Acknowledgments

This guidance was produced by [researchers at Queen Mary University London](#), with grateful thanks to:

- Dr Katherine Nutt, Senior Clinical Psychologist, St Andrews Burns Centre, Broomfield Hospital, Mid and South Essex NHS Foundation Trust
- The VTCT Foundation
- The Centre for Appearance Research at the University of the West of England
- Jessica Hunt and Claire Burton of Leigh Day solicitors

Updated August 2024