



MONEY AND  
MENTAL HEALTH  
POLICY INSTITUTE



# TIME TO ACT

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The Equality Act, essential services  
and people with mental health problems

Merlyn Holkar

# Contents

|  |           |
|--|-----------|
| <b>Executive summary</b>   | <b>5</b>  |
| <b>Introduction</b>  | <b>9</b>  |
| <b>Section one: What the Equality Act requires in essential services</b>   | <b>12</b> |
| 1.1 What does the Act mean for essential service providers?                | 13        |
| 1.2 What does the Act mean for essential service regulators?               | 15        |
| <b>Section two: How the Equality Act is working in practice</b>            | <b>17</b> |
| 2.1 Common challenges for people with mental health problems               | 17        |
| 2.2 Providers are rarely proactive   | 19        |
| 2.3 Providers miss opportunities to understand and support their customers | 20        |
| <b>Section three: What's going wrong?</b>                                  | <b>24</b> |
| 3.1 Barriers facing people with mental health problems                     | 24        |
| 3.2 Essential service providers  | 27        |
| 3.3 Regulation   | 29        |
| <b>Section four: Raising standards in essential services</b>               | <b>32</b> |
| 4.1 Essential service providers  | 32        |
| 4.2 Regulators   | 42        |
| 4.3 Government   | 45        |
| <b>Conclusion</b>  | <b>46</b> |

## Publication

The Money and Mental Health Policy Institute,  
February 2022.

22 Kingsway, London, WC2B 6LE.

## Citation

If you are using this document in your own writing, our preferred citation is:

Holkar M. Time to Act: the Equality Act, essential services and people with mental health problems. Money and Mental Health Policy Institute. February 2022.

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## Acknowledgements

The Money and Mental Health Team would like to express our gratitude and admiration to all those members of our Research Community who gave up their time and shared their experiences.

Thanks also go to attendees at two roundtables held to discuss the findings and to Catherine Casserley for providing comments on an earlier draft. Any errors remain the author's own.

## About the authors

Merlyn Holkar was a Senior Research Officer at the Money and Mental Health Policy Institute, until December 2021. Much of Merlyn's research focused on essential services — including financial services, energy and telecoms — and how well these sectors work for people with mental health problems.

This report was supported by Impact on Urban Health. It represents the research and views solely of the authors and of the Money and Mental Health Policy Institute and does not represent the views or experiences of Impact on Urban Health.

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## Executive summary

### **The Equality Act and people with mental health problems**

- The Equality Act 2010 requires providers of essential services to make reasonable adjustments for customers with disabilities, to ensure they are not disadvantaged as a result of their health condition.
- There is broad understanding of how physical disabilities can affect our ability to engage with services. While support could still be improved, banks, energy providers, water companies and telecoms firms commonly offer, for instance, letters written in braille or large print for customers with visual impairments.
- But, as previous Money and Mental Health research has shown, firms providing these vital services often lack understanding of the practical ways that mental health problems can affect people, so their services aren't designed with mental health in mind.

### **Millions of people could be disadvantaged by firms failing to meet their legal duties**

- This is not a niche issue. We estimate that 18% of the adult population has a mental health problem that entitles them to protection under the Equality Act, equivalent to over 9.5 million people.
- Despite these issues being widespread, polling for this report finds that only three in ten (29%) people with mental health problems say that essential service providers usually anticipate and meet their needs, as required under the Equality Act.
- One factor contributing to this is that essential service providers do not consistently ask people with mental health problems about their needs. Just one in three (32%) people with mental health problems report that most of their providers have asked if they have any needs they should be aware of.
- But, even when customers feel comfortable letting firms know about their condition, too often the opportunity to understand people's needs is missed, with one in three people with mental health problems telling us that no further support was offered after they disclosed.

### **The impact on people with mental health problems**

- Difficulties that people with mental health problems face when dealing with essential services can have a significant financial impact – estimated to cost between £1,100-£1,500 each year.
- But psychological harm can also occur. More than a third (37%) of people who have experienced mental health problems exhibit significant levels of anxiety when dealing with essential service providers, almost three times the rate amongst people who have never experienced mental health problems (13%).

### **What's going wrong?**

- Fundamentally, the responsibility to comply with the Act lies with essential service providers. It is reasonable to expect providers to have understood their obligations and developed adjustments for people with mental health problems in the more than a decade since the Act was introduced. However, issues at several levels contribute to this problem.
- People with mental health problems can find it difficult to exercise their rights under the Equality Act, due to low awareness of what they are entitled to and psychological barriers that make it harder to ask for help or raise complaints.
- Essential service providers are often uncertain what sort of adjustments to offer for people with mental health problems and do not see Equality Act enforcement as a credible threat.
- There is also a lack of active enforcement of the Equality Act. The regulator responsible – the Equality and Human Rights Commission (EHRC) – does not focus on essential services, and essential service regulators – like the Financial Conduct Authority and Ofgem – lack the power to enforce the Act.

### **Delivering better services to people with mental health problems**

#### **Essential service providers should:**

- Offer at least a basic set of adjustments to address the most common challenges that customers with mental health problems face.
- Improve their processes for encouraging and managing customer disclosures of mental health problems.

#### **The EHRC should:**

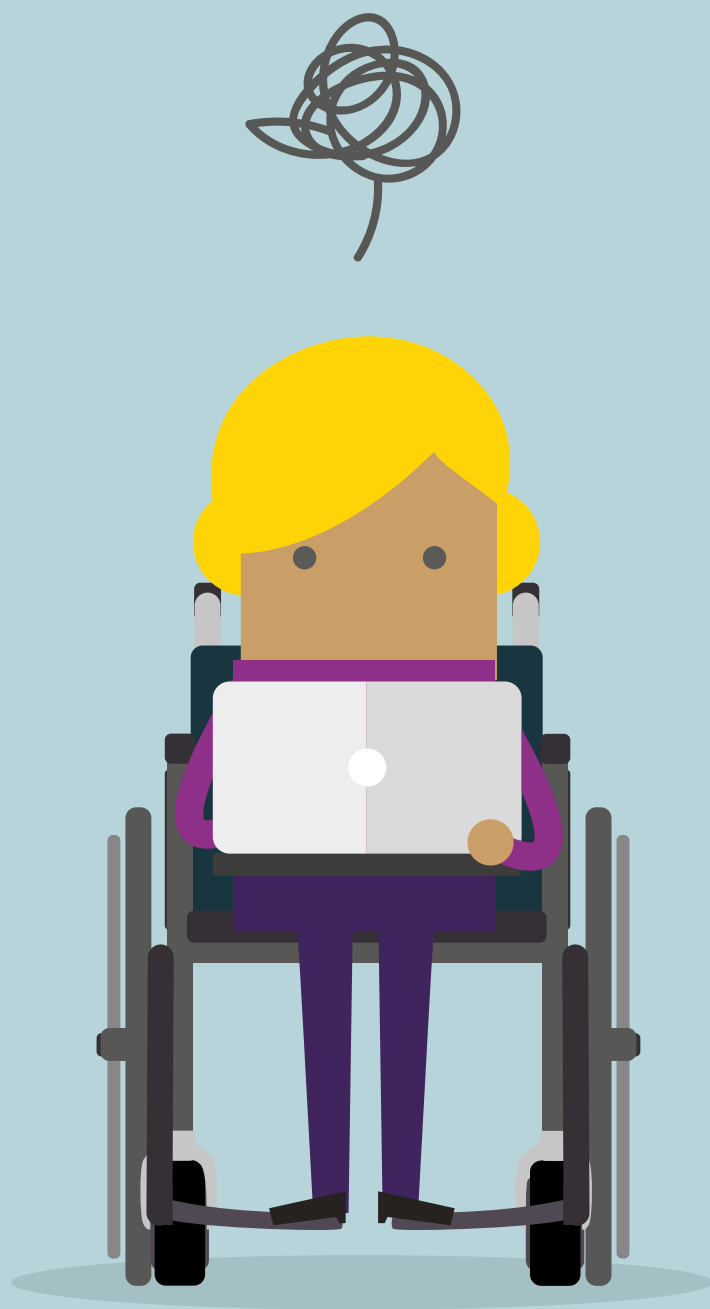
- Make essential service provider compliance with the Equality Act a priority. We recommend that the EHRC writes to providers to remind them of their legal duties and launches an inquiry into compliance in these essential sectors.
- Build a simple reporting tool for people to log suspected breaches of the Equality Act.

#### **Sector regulators should:**

- Work in partnership with the EHRC to improve Equality Act oversight in their sector, including through making referrals and sharing intelligence.
- Systematically remind regulated providers about their legal duties under the Equality Act.
- Collect data on the experiences and outcomes of protected groups in their markets, to inform a data-led approach to improve equality of opportunity.

#### **Essential service providers should:**

- Increase funding for the Equality and Human Rights Commission, so that it is better able to meet its responsibilities and ensure compliance with the Equality Act.





## Introduction

Financial services, telecoms, water and energy are essentials of modern life. But, all too often, managing these services is a stressful and draining experience for people with mental health problems. When providers don't understand poor mental health and how it can affect what someone needs as a customer, it can lead to real harm. Across the country, people with mental health problems are three and a half times as likely to be seriously behind with bills,<sup>1</sup> and this can put people's mental health under extreme pressure. People in problem debt are three times as likely to have considered suicide in the past year.<sup>2</sup>

"I can't deal with them. I find it really frightening and overwhelming. I find a lack of understanding and flexibility. So many try to shoehorn you into 'solutions' that aren't right and I frequently feel bullied or treated like I'm stupid."

*Expert by experience*

At Money and Mental Health we believe many of these challenges can be overcome if services are designed more inclusively, so that the mainstream service is accessible for as many diverse customers as possible. We're proud to work directly with ambitious providers on this, through our Mental Health Accessible programme.<sup>3</sup> However, there are practical limits to inclusive design, and some customers will always struggle more. We see an important role for providers to offer specialist support, including making adjustments to help individual customers overcome difficulties.

But the duty on providers to make such adjustments is not only a moral one. In this report we explore the role that the Equality Act plays in this picture.

The Act is a key legal protection, designed to guard against discrimination and advance equality of opportunity across society. It entitles disabled people to "reasonable adjustments" from service providers. Despite this requirement, people with mental health problems have frequently told us about situations in which essential service providers have failed to support them. In this report, we explore why this potentially invaluable piece of legislation appears not to be delivering for customers with mental health problems. To do that, we examine the extent to which people with mental health problems are protected under the Act, and what this means for essential service providers and regulators. We then look at how well this protection is currently working, as well as what sort of adjustments would be most useful for people with mental health problems. The report concludes with recommendations to a range of actors, focused on ensuring that, regardless of our mental health, everyone can access and use these key services in a way that meets their needs.

To do that, this paper draws on:

- A nationally representative poll of 2,000 people, conducted 29 October – 2 November 2021, carried out by Opinium.
- A survey and a focus group with members of the Money and Mental Health Research Community, a group of thousands of people with lived experience of mental health problems, who are at the heart of everything we do. The survey, carried out in July and August 2021, asked 248 participants about the challenges they face when dealing with essential services and for ideas about steps that providers could take to address these challenges.

1. Holkar M. Debt and mental health: a statistical update. Money and Mental Health Policy Institute. 2019.

2. Holkar M and Bond N. A silent killer. Money and Mental Health Policy Institute. 2018.

3. For more information about our Mental Health Accessible programme, please visit: <https://www.moneyandmentalhealth.org/mentalhealthaccessible/>

## This report

The rest of this report is structured as follows:

- **Section one** explores the legal protection that the Equality Act offers people with mental health problems as they interact with essential service providers
- **Section two** looks at how well Equality Act protections are currently working for people with mental health problems
- **Section three** examines the key reasons why people with mental health problems are consistently not receiving the protection they are entitled to under the Equality Act
- **Section four** sets out recommendations that a range of actors can take, to improve compliance with the Equality Act and reduce the disadvantage that people with mental health problems face when dealing with essential services.



## Section one: What the Equality Act requires in essential services

The Equality Act 2010 made it illegal to discriminate against people on the basis of nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. This protection is broad, extending across the world of work and people's interactions with services. Compliance with the Act is enforced by the Equality and Human Rights Commission (EHRC).

Broadly speaking, discrimination occurs when the way in which a provider delivers a service results in people being treated worse or being disadvantaged because of their protected characteristic.<sup>4</sup> For people with a disability, this applies when they are treated unfavourably because of something arising in consequence of their disability and a failure by the provider to make adjustments for their disability. Crucially, discrimination does not have to be intentional to be illegal. If someone with a protected characteristic is disadvantaged due to an oversight in a company policy or a one-off mistake from an inexperienced staff member, that can still be illegal.

**“You’re disabled under the Equality Act 2010 if you have a physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on your ability to do normal daily activities.”<sup>5</sup>**

Our view<sup>6</sup> is that many people with mental health problems meet the Equality Act definition of having a disability. Based on recent polling, we estimate that 18% of the adult population have a “long-term” mental health problem that has a “substantial” impact on their ability to do normal daily activities – equivalent to over 9.5 million people.<sup>7</sup>

For a disability to be classed as “long-term” it must be likely to last for at least a year, or likely to recur. Some people will be unwell continuously for a year, but mental health problems often fluctuate, so many more will experience periods when they are well, along with episodes of poor mental health. Many people with mental health problems will satisfy this definition, as common mental health problems are often highly recurrent. For example, at least half of people who recover from a first episode of depression experience depression again in their lifetime.<sup>8</sup>

4. This basic definition of disability discrimination covers direct discrimination – when people are treated worse – as well as indirect discrimination – when people are disadvantaged.

5. Gov.uk. Definition of disability under the Equality Act 2010. <https://www.gov.uk/definition-of-disability-under-equality-act-2010>.

6. The views in this section are the views of the authors. We are not lawyers, but we consulted with a range of legal and policy experts to inform our understanding of the Equality Act. and we are confident in our interpretation of how it applies to people with mental health problems. However, in any individual case, it is for the courts to interpret how the Act applies and what action is reasonable.

7. Money and Mental Health analysis of ONS mid-year population estimates 2020 and Opinium online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative.

8. Burcusa S and Iacono W. Risk for Recurrence in Depression. *Clinical Psychology Review* 2007; 27; 959–985.

A “substantial” negative effect is a relatively low bar. In the Equality Act, “substantial” means anything more than a “minor” or “trivial” effect. So, to meet this definition, a mental health problem needn’t prevent someone from doing daily activities, it just has to make them more than trivially more difficult. There are countless ways that mental health problems can have this effect. For example, difficulty concentrating when depressed can make household budgeting take longer and social anxiety can make grocery shopping a stressful experience.

Crucially, determinations about whether a health problem has a “substantial” negative effect are based on how much someone would struggle if they weren’t receiving any medication or treatment for their health problem. Millions of people rely on medical support to manage their mental health. The most recent data, based on July-September 2021, shows that well over six million people were prescribed antidepressants in England alone, equivalent to 14% of the adult population.<sup>9</sup> Many more are prescribed different types of medication or receive other medical support, such as therapy, for their mental health. Eight in ten people with a long-term mental health problem (81%) say that they would struggle with normal daily activities without medical support, which leads to our estimate of 18% of the adult population having a mental health problem that is classed as a disability under the Equality Act.<sup>10</sup>

### 1.1 What does the Act mean for essential service providers?

Any organisation that offers goods or services to the public has a legal duty to offer reasonable adjustments, so that disabled people can use their services and aren’t disadvantaged compared to non-disabled people. This duty is designed to ensure that disabled people receive a similar standard of service to the rest of the population.

**“The duty to make reasonable adjustments aims to make sure that if you are a disabled person, you can use an organisation’s services as close as it is reasonably possible to get to the standard usually offered to non-disabled people.”<sup>11</sup>**

The duty also permits providers to go beyond equality and offer disabled people a better standard of service. Under the Equality Act, it is always lawful to treat a disabled person more favourably than a non-disabled person.<sup>12</sup>

Reasonable adjustments are changes to the way that a service is delivered to help a disabled customer use the service. This can include changing processes, adapting physical features of premises or providing additional services to help disabled people overcome difficulties. Essential service providers routinely offer a range of reasonable adjustments, such as braille or large print letters for people with visual impairments or British Sign Language interpretation for people with hearing impairments. Few providers, however, have such clear adaptations for customers with mental health problems.

9. Money and Mental Health analysis of NHBSA ‘medicines used in mental health’ statistics and ONS mid-year population estimates 2020.

10. Money and Mental Health analysis of Opinium online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative.

11. Equality and Human Rights Commission. Using a service: reasonable adjustments for disabled people. <https://www.equalityhumanrights.com/en/multipage-guide/using-service-reasonable-adjustments-disabled-people>.

12. Equality and Human Rights Commission. Disability discrimination. <https://www.equalityhumanrights.com/en/advice-and-guidance/disability-discrimination>

Providers are only required to make adjustments that are 'reasonable', so factors like the size of the company and the cost of providing any particular adjustment may be relevant. However, essential service providers should be mindful that the type of service that they offer also matters. Essential services are vital: energy and water are basic necessities, while financial services and telecoms are increasingly indispensable in order to participate in society and access public services. The importance of these services is likely to strengthen the scale of adjustment that is considered reasonable.

The duty to make reasonable adjustments puts the onus squarely on service providers to anticipate the needs of disabled people. It is not sufficient to wait for a disabled customer to highlight a problem before considering how to make an adjustment.

**“The duty is ‘anticipatory’. This means an organisation cannot wait until a disabled person wants to use its services, but must think in advance (and on an ongoing basis) about what disabled people with a range of impairments might reasonably need.”** <sup>13</sup>

This is a vital aspect of Equality Act protection for people with mental health problems. Mental health problems are underdiagnosed,<sup>14</sup> so some people struggle with symptoms without realising that they are experiencing a clinical mental health problem. Many more who have received a diagnosis don't feel comfortable telling essential service providers about their condition. Nevertheless, providers have a legal duty to anticipate the needs of their disabled customers, including those who can't or don't disclose information about their health problems.

The duty to make reasonable adjustments is a strong expectation and implies that providers should have a process for anticipating what disabled people with a range of impairments might need and reviewing the range of adjustments that they offer. Considering the needs of people with mental health problems must be a key part of this process. One in four people will experience a mental health problem each year,<sup>15</sup> and depression alone is considered the leading cause of disability worldwide.<sup>16</sup>

Essential service providers that fail to anticipate disabled people's needs and provide reasonable adjustments are breaking the law, exposing themselves to enforcement action from the EHRC and legal claims from individual customers.

13. Ibid.

14. A third (36%) of people experiencing a common mental disorder like depression or anxiety have never received a diagnosis. McManus S et al (eds.) Mental health and wellbeing in England: Adult Psychiatric Morbidity Survey 2014. NHS Digital. 2016.

15. McManus S et al. Adult psychiatric morbidity in England, 2007. Results of a household survey. NHS Information Centre for Health and Social Care. 2009.

16. World Health Organisation. Depression and Other Common Mental Disorders: Global Health Estimates. 2017.

## 1.2 What does the Act mean for essential service regulators?

The Equality Act also places a duty on regulators of essential services. All public bodies have a Public Sector Equality Duty (PSED), that requires them to work to eliminate discrimination against people with protected characteristics, to advance equality of opportunity and to foster good relations between people with and without protected characteristics. This duty is broad, so it applies to everything that regulators do. Regulators must consider this duty as part of their recruitment, policymaking, enforcement and all other activities.

Equality impact assessments (EIAs) are a key tool that regulators can use to meet these aims. EIAs provide a framework for regulators to consider the likely impact of their actions on people with protected characteristics. Completing an EIA is an important step<sup>17</sup> when making new policy and it can help regulators to reflect on the impact of their plans and make adjustments or add mitigation if they are likely to work against the regulators' PSED.

The consequences of a regulator failing to meet the PSED can be severe. Regulators can expose themselves to legal action, including judicial review that rolls back regulatory action.

### Section one summary

- We estimate that 18% of the adult population has a mental health problem that entitles them to protection under the Equality Act, equivalent to over 9.5 million people.
- All essential service providers have a legal duty to anticipate the needs of these people and provide "reasonable adjustments" so that they aren't disadvantaged.
- Essential service regulators have a duty to advance equality of opportunity and work to eliminate discrimination. This duty applies to everything that regulators do, including their policymaking.

<sup>17</sup>. Completing an EIA is a legal requirement in Wales and Scotland. This is not the case in England but if such an assessment has not been completed, it may be difficult to demonstrate compliance with the s.149 duty.





## Section two: How the Equality Act is working in practice

Despite the strength in principle of protections under the Equality Act, we find that people with mental health problems often experience poor outcomes when dealing with essential services, with many driven by accessibility challenges that providers could reasonably offer adjustments for. Many people with mental health problems feel that essential service providers don't understand their needs and we find that providers rarely ask customers about their needs.

"I find they don't understand your problem and I get very frustrated when I can't get them to understand what it is that I want. They are obviously not trained to deal with people with mental health problems."

*Expert by experience*

Despite essential service providers having a legal duty to anticipate disabled people's needs, just three in ten (29%) people with mental health problems who are protected under the Equality Act report that essential service providers usually anticipate and meet their needs.<sup>18</sup> Many Research Community respondents felt that providers lack understanding of the practical ways that mental health problems can affect people as customers, and we found a similar perception in our national polling. Half of people with mental health problems who are protected under the Equality Act report that providers usually don't understand their needs (49%), more than twice the rate among people without a disability (20%) and significantly higher than among people with a physical disability (31%).<sup>19</sup>

### 2.1 Common challenges for people with mental health problems

Mental health problems don't just affect how people feel; many of the core symptoms are cognitive, practically affecting people's behaviour and the way they interpret the world around them.<sup>20</sup> Common symptoms include problems with memory, concentration, decision-making and impulse control. These difficulties can profoundly affect people's ability to engage with essential service providers, use their services and manage their money.

"Mental health issues should not be stigmatized or made light of. It is not just having a bad day or feeling blue – it is real and awful and even the days when you are not sitting in the bottom of the darkest blackest well you still feel like you are walking through treacle just to get through the day."

*Expert by experience*

If services aren't designed with these common symptoms in mind, people with mental health problems often struggle to use them, and this can cause real harm. People with mental health problems can experience difficulties across their interactions with essential service providers, but we find persistent challenges in four main areas:

18. Money and Mental Health analysis of Opinium online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative.

19. Ibid.

20. For a detailed exploration of common symptoms of mental health problems and how they affect people's financial capability and behaviour, see – Holkar M. Seeing through the fog. Money and Mental Health Policy Institute. 2017.

- **Account management** – a significant proportion of people with mental health problems struggle with the basics of account management when unwell. Tasks like logging into an account, submitting a meter reading and making payments can all be arduous and stressful for people struggling with concentration or motivation. Difficulties with account management often lead to unexpected costs, like large bills and additional charges, that can put huge pressure on people's financial lives.

"During an episode of mental health crisis I am unable to manage my personal finances. I frequently mismanage my finances i.e. I don't record accurately my spending or going over an agreed overdraft unintentionally."

*Expert by experience*

- **Getting in touch** – three quarters (75%) of people who have experienced mental health problems have serious difficulties engaging with at least one commonly-used communication channel, such as using the telephone, opening letters or face-to-face contact.<sup>21</sup> If people are forced to use a channel that they struggle with, this can be acutely stressful and counter-productive.

"It is impossible to use the phone to contact people. Anxiety levels prevent this. If I can call, it's difficult to explain the problem because of distress. It can be hard to filter out what is important and what isn't."

*Expert by experience*

- **Understanding and receiving information** – poor mental health can affect people's ability to navigate and understand information from essential service providers. People often misinterpret bills and contracts, or struggle to find important information on providers' websites, and this can lead to poorly-informed decisions.

"Too much legal jargon or too much wordiness can make finding the information you need very stressful and tiring."

*Expert by experience*

- **Dealing with problems** – four in ten people who have experienced mental health problems (38%) find it difficult to deal with problems with essential services, four times the rate amongst those who haven't (11%).<sup>22</sup> Processes for resolving problems are often complex and hard to navigate when unwell, and some people with mental health problems find confrontation stressful and avoid it.

"It's dreadfully hard to pick up the phone/email so escalating interest charges ramp up and unless you have someone to help out it gets proper out of control."

*Expert by experience*

21. Holkar M, Evans K and Langston K. Access essentials. Money and Mental Health Policy Institute. 2018.

22. Ibid.

These common accessibility challenges contribute to higher levels of financial and psychological harm when dealing with essential services. Difficulties dealing with essential services are estimated to cost people with mental health problem between £1,110 – £1,500 each year,<sup>23</sup> and people with mental health problems are three and a half times more likely to be in problem debt than those without.<sup>24</sup> People with mental health problems often directly attribute debt problems to difficulties engaging with providers. However, for many, the psychological impact of these challenges is most concerning. More than a third (37%) of people who have experienced mental health problems exhibit significant levels of anxiety when dealing with essential service providers, including symptoms such as a racing heart or trouble breathing. This is almost three times the rate amongst people who have never experienced mental health problems (13%).<sup>25</sup>

Essential service providers must recognise that when they are unable to meet people with mental health problems' needs, and this causes psychological harm, this directly exacerbates their health condition. This is the equivalent of asking someone with a broken leg to walk on it or placing someone with asthma in a damp room.

"My mental health problems have massively affected my ability to deal with essential service providers. I am unable to sort out my debt with <water company>, sort out problems with <telecoms provider>, change electric and gas supplier and I lost a lot of money as I was unable to sort out a bank problem."

*Expert by experience*

## 2.2 Providers are rarely proactive

While many people with mental health problems struggle with these challenges, essential service providers are not consistently taking proactive steps to address them, such as asking customers if they have any access needs or letting them know about the support they can offer.

People are experts in their own mental health problems, and will often have a good understanding of what exactly they struggle with and why. However, our polling shows that many essential service providers do not ask people with mental health problems about their access needs and miss out on this information as a result. Just one in three (32%) people with mental health problems who are protected under the Equality Act report that most of their providers have asked if they have any needs they should be aware of.<sup>26</sup> Without this information it is difficult for providers to offer appropriate adjustments and meet disabled customers' needs.

"Don't make any assumptions about what the customer's needs might be. Listen to the customer fully and compassionately... ask the customer how best to support them."

*Expert by experience*

23. Rogers C, Poll H and Isaksen M. The mental health premium. Citizens Advice. 2019.

24. Holkar M. Debt and mental health: A statistical update. Money and Mental Health Policy Institute. 2019.

25. Holkar M, Evans K and Langston K. Access essentials. Money and Mental Health Policy Institute.. 2018.

26. Money and Mental Health analysis of Opinion online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative

Many providers do have support options that would be useful for people with mental health problems, and all have a legal responsibility to offer reasonable adjustments, but communication about these options is often poor. Fewer than three in ten people with mental health problems who are protected under the Equality Act (28%) report that most of their providers have let them know about the additional support they can offer to customers with mental health problems.<sup>27</sup> When providers aren't proactive, customers miss out on vital assistance. It is likely that their most vulnerable customers, who often find it harder to advocate for themselves, will be worst affected.

### 2.3 Providers miss opportunities to understand and support their customers

When someone tells an essential service provider about a mental health problem this presents a golden opportunity for the provider to understand their customer's needs, ensure that they are not disadvantaged when using the service and offer adjustments. However, we find that providers rarely take advantage of these situations.

In polling conducted in summer 2021, we found that across a range of essential services, up to one in three customers who disclosed they had a mental health problem weren't offered additional support. This varied across the different sectors, from 33% of those who had disclosed to a financial services firm, to 30% with energy firms, 29% with water companies and 28% with telecoms providers." Also add a footnote at the end of that para, with the footnote text being "Opinium online survey of 5,000 people with mental health problems, carried out 25 June - 22 July 2021."

We asked Research Community members about the last time they told essential service providers about their mental health problems. Only a minority were asked how this would affect the way they interact with their services. As Figure 1 shows, this varied from one in four (26%) respondents being asked by a water company to just one in eight (13%) being asked by a telecoms or financial service provider.

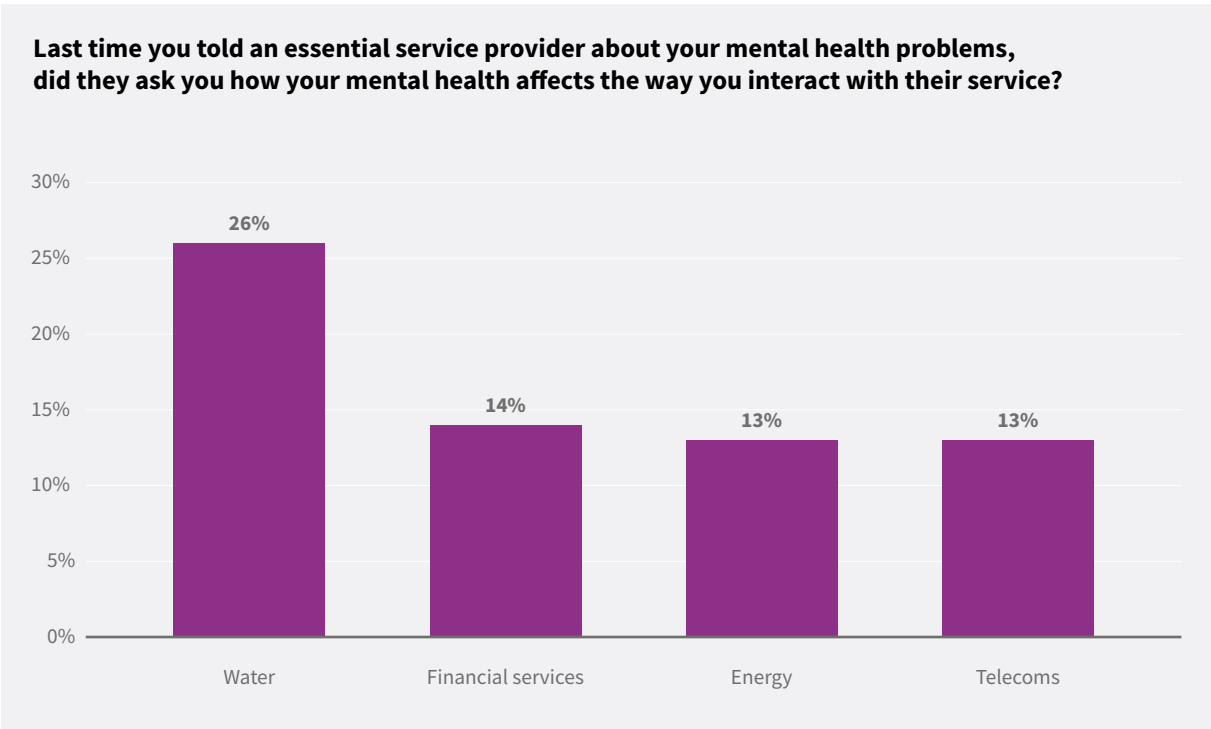
Even when providers do ask people with mental health problems about their needs, people often aren't offered practical adjustments to address the challenges they face. A number of Research Community respondents told us that providers had recorded information about their mental health problems, but nothing seemed to change. This can be a frustrating experience that discourages people from telling providers about their mental health problems in the future.

"Usually the service providers were very sympathetic but useless with any real practical help."

*Expert by experience*

<sup>27</sup>. Ibid

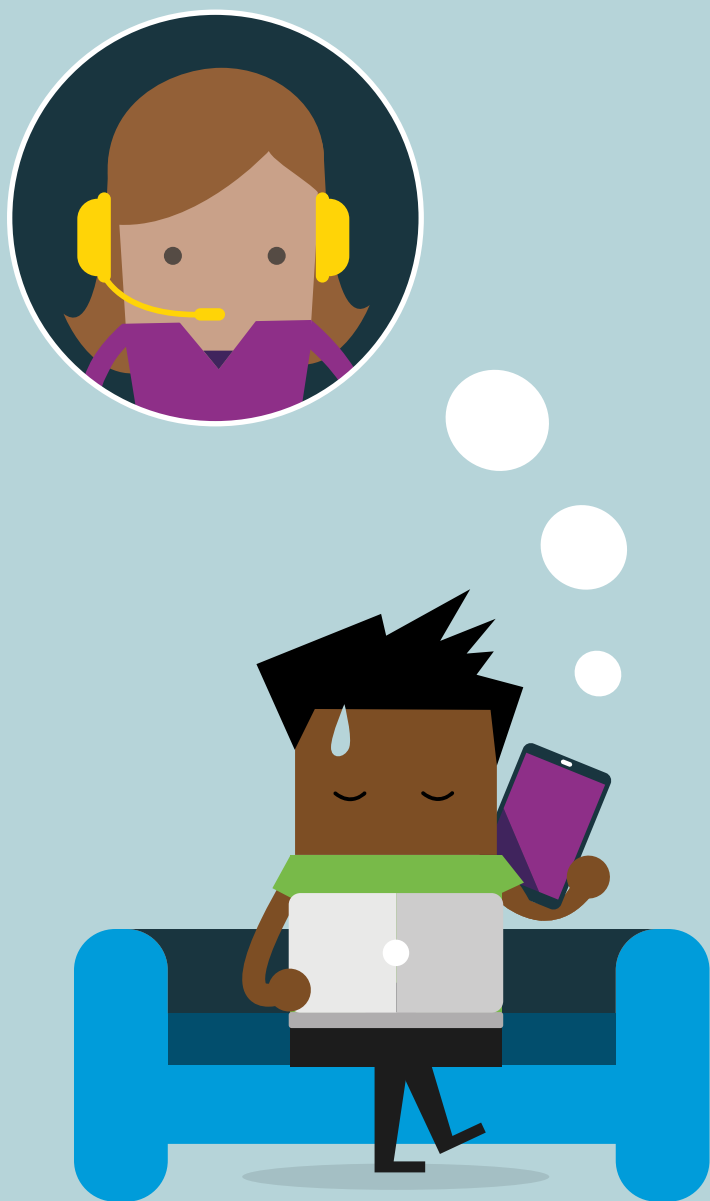
**Figure 1: Last time you told an essential service provider about your mental health problems, did they ask you how your mental health affects the way you interact with their service?**



Source: Money and Mental Health survey of 248 people with lived experience of mental health problems.  
Bases vary from 48 to 188 people.

### Section two summary

- Despite the strength, in principle, of protections under the Equality Act, just three in ten (29%) people with mental health problems who are protected under the Equality Act report that essential service providers usually anticipate and meet their needs.
- People with mental health problems face common challenges when dealing with essential services which contribute to worse outcomes. More than a third (37%) of people who have experienced mental health problems exhibit significant levels of anxiety when dealing with essential service providers, almost three times the rate amongst people who have never experienced mental health problems (13%).
- People with mental health problems told us that essential service providers do not consistently ask people with mental health problems about their access needs and often miss opportunities to understand and support customer who disclose a mental health problem.



## Section three: What's going wrong?

Our polling and the views of our Research Community suggest that Equality Act protection is not currently working well for people with mental health problems. Fundamentally, this appears to be an issue of essential service provider non-compliance. It is reasonable to expect providers to have understood their obligations and developed adjustments for people with mental health problems in the more than a decade since the Act was introduced. Indeed, similar obligations existed under the Disability Discrimination Act 1995, which had been in place since 1996. However, based on our consumer research and engagement with essential service providers and regulators, we feel that issues at several levels contribute to this problem.

People with mental health problems can find it difficult to exercise their rights under the Act, essential service providers are uncertain about what sort of adjustments to offer customers with mental health problems and there is a lack of active regulatory oversight of Equality Act compliance. In this section we will explore what's going wrong at each of these levels.

### 3.1 Barriers facing people with mental health problems

#### Low awareness of Equality Act protections

While the majority of people with mental health problems who are protected under the Equality Act have heard about the Act (70%),<sup>28</sup> few know specifically how it applies to them. Six in ten of this group don't know how the Act applies to them when using services or paying for goods (60%) or how the Act applies to essential service providers (61%).<sup>29</sup>

"I've heard of it [The Equality Act] but no idea what it stands for."

*Expert by experience*

Practically, this low awareness has a significant impact. Most people with mental health problems don't know their rights under the Equality Act, so will find it harder to recognise when they have been mistreated and seek justice. People simply won't ask for reasonable adjustments, or challenge providers who are being inflexible, if they don't know what they are entitled to.

#### Low levels of disclosure

Few people with mental health problems ever tell essential service providers about their mental health problems, so providers will have limited exposure to the challenges that people with mental health problems face, unless they take proactive steps to anticipate these customers' needs.

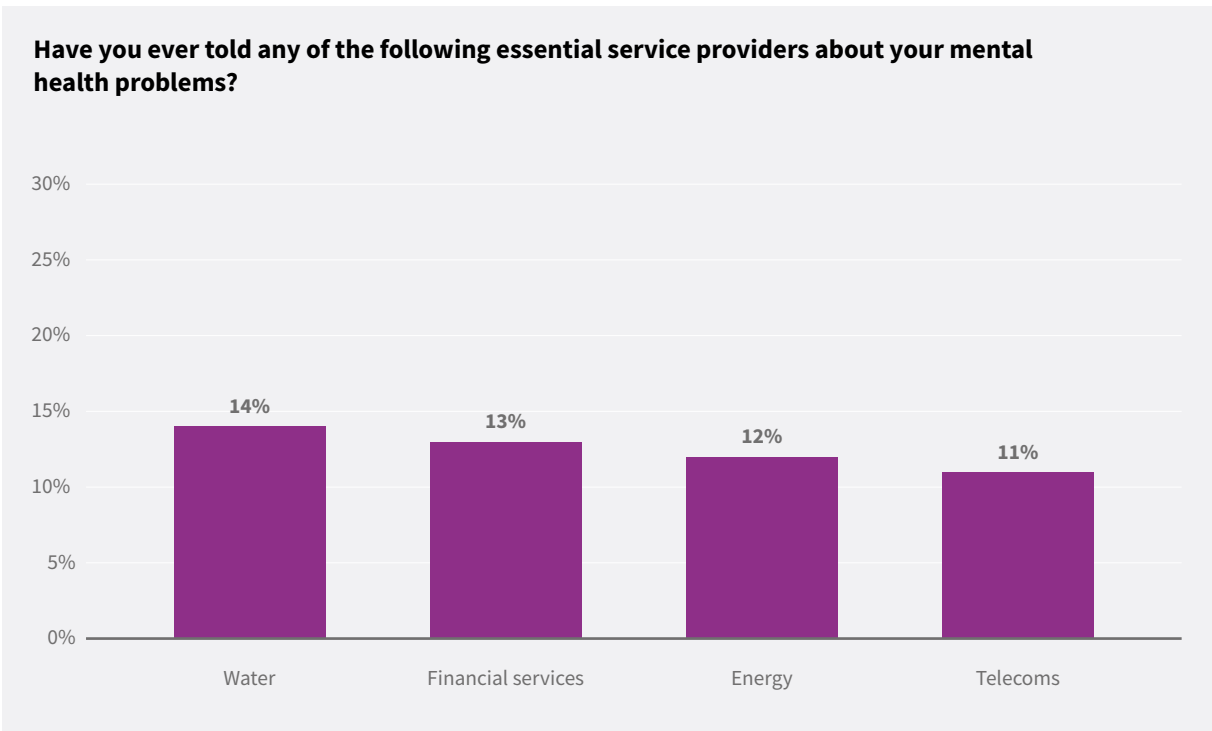
As Figure 2 shows, just one in nine people with mental health problems (11%) have ever told a water company about their mental health problems, rising slightly to just one in seven (14%) for financial service providers.

<sup>28</sup>. Money and Mental Health analysis of Opinium online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative.

<sup>29</sup>. In each case a further one in ten are unsure. Ibid.



Figure 2: Have you ever told any of the following essential service providers about your mental health problems?



Source: Money and Mental Health analysis of online polling conducted by Opinium. 5,001 people with mental health problems, weighted to be nationally representative of those who have experienced a mental health problem, were surveyed between 25 June and 22 July 2021. For further information see the methodology annex published alongside The state we're in, at [www.moneyandmentalhealth.org/the-state-were-in](http://www.moneyandmentalhealth.org/the-state-were-in).

The most common reason that people don't tell providers about their mental health problems is because they simply don't realise that it could make a difference. When asked for the main reasons they didn't disclose, half (50%) say that they didn't think it was relevant and three in ten (28%) say they weren't aware

that it would affect how the organisation supported them.<sup>30</sup> While conversations about mental health are becoming more common, telling a stranger about your mental health is a big step and can be a stressful experience, so if the value of disclosing isn't clear people usually won't open up.

30. Bond N and D'Arcy C. The state we're in. Money and Mental Health Policy Institute. 2021.

Having a bad experience of disclosure will often discourage people from telling other providers about their mental health problems. In particular, if staff don't believe claims about a mental health problem or someone feels that their experiences have not been taken seriously, this can be a humiliating and frustrating experience.

"Staff should never laugh or downplay the problem the person is describing. Never make stupid suggestions. I have agoraphobia and have been told to just go out for a walk and go further every day. Really!"

*Expert by experience*

Similarly, if someone discloses information about their mental health problems but sees no benefit, for instance challenges that they face aren't addressed, this can put people off going through the effort again.

"I'm supposed to be on the priority and accessibility list for each of my services, but it doesn't really help me much."

*Expert by experience*

Unfortunately, this is common. In the energy sector, for example, only a small minority of people who have disclosed a vulnerability and had information about their situation recorded on a priority service register (PSR) receive an additional service as a result.<sup>31</sup>

The majority have their needs recorded but receive no practical support from their energy provider.

### Psychological barriers

Even when people with mental health problems know about their rights or recognise a problem, psychological barriers related to poor mental health can make it harder to raise complaints. Approaching two thirds (63%) of people with mental health problems who are protected under the Equality Act struggle to ask providers for help when they are unwell,<sup>32</sup> and this is often due to symptoms of poor mental health. Common symptoms like low motivation or difficulties concentrating, for example, can make it exceptionally challenging for people to advocate for themselves.<sup>33</sup>

"I feel a lot of anxiety about trying to use the equality act to help me."

*Expert by experience*

For others, avoidance is a common coping mechanism for anxiety, which can mean that people do not engage in difficult interactions with providers such as confrontations or complaints.<sup>34</sup> Nearly two thirds (63%) of people with mental health problems who are protected under the Equality Act say they would find the prospect of challenging a provider daunting, almost double the rate among people without health problems (34%).<sup>35</sup> For many, the prospect of challenging a large company whose services you depend upon is too stressful to contemplate, let alone taking them to court.

31. The most recent data, from 2018, shows that just 873,082 services were provided to 6,703,753 electricity PSR customers and 659,650 services were provided to 5,646,740 gas PSR customers. Ofgem. Vulnerable consumers in the energy market: 2019. 2019.

32. Money and Mental Health analysis of Opinium online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative.

33. Holkar M. Seeing through the fog. Money and Mental Health Policy Institute. 2017.

34. Ibid.

35. Money and Mental Health analysis of Opinium online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative.

### 3.2 Essential service providers

#### Uncertainty about what to offer

Most providers have an established set of adjustments that they can offer to certain groups of disabled people. For instance, for people with visual impairments, it is common to offer braille or large print letters and many providers have an established process for doing so. However, providers are often uncertain what adjustments to offer people with mental health problems, and it is likely that low levels of awareness of the practical impacts of mental health problems contributes to this uncertainty. Discussions we held with sector experts, including staff from essential service providers, suggested that providers are often concerned that the needs of this group can be unpredictable and vary substantially.

In practice, this means that few providers have developed functionality or processes to provide adjustments for people with mental health problems. This uncertainty puts huge pressure on frontline staff, who will routinely support customers with mental health problems. The onus is on staff to try and understand customers' needs and respond appropriately, but without practical options that can help with customer accessibility challenges and established guidance on how to use them, their ability to respond is severely constrained. This can lead to disempowering outcomes, such as customers being encouraged to nominate a third party to manage their account, rather than being supported to use the service independently.

"It [mental health problems] made me very stressed but it was so hard to get hold of a human to actually talk to it became even more frustrating. In the end it was easier to pass the problem to my wife to sort out, as she had more patience than me. Then I had a terrible feeling of guilt and worthlessness that I did that."

*Expert by experience*

The needs of people with mental health problems do vary. Two people with a diagnosis of depression may experience different symptoms and may face different challenges when dealing with essential service providers. But there are common challenges that many struggle with and it is reasonable to expect essential service providers to anticipate and prepare for these needs.

## Incentive not to encourage disclosure

Disclosure can be a springboard to better understand and support customers with mental health problems, but some providers may perceive an advantage in not encouraging disclosure. Once a provider is aware that a customer has mental health problems they may have a duty to provide reasonable adjustments, which can incur costs. And if a provider identifies a customer as vulnerable and then fails to treat them fairly, this could result in action from the sector regulator or ombudsman. In some cases, it seems that these concerns override regulatory and customer service incentives to find out more about customers' needs. This may explain why few providers take proactive steps to encourage customers to tell them about mental health problems and other vulnerabilities.

If an essential service provider doesn't actively encourage disclosure, they are likely to have limited visibility of their customers with mental health problems, as this group already finds it harder to ask for help or disclose information about their mental health, as discussed above.

Essential service providers that do not take steps to encourage disclosure may be in breach of sector regulation. Ofcom and FCA guidance makes it clear that providers should take steps to identify vulnerable customers, in order to treat them fairly.<sup>36</sup> Energy suppliers are required to take all reasonable steps to identify vulnerable customers and offer them priority services.<sup>37</sup> And Ofwat resources highlight a range of ways that water companies can identify customers who may be vulnerable, in order to better meet their needs.<sup>38</sup>

All essential service providers also have an Equality Act duty to anticipate common needs of disabled people, including those who don't disclose problems, and make reasonable adjustments for them.

## Equality Act enforcement is not seen as a credible threat

The above factors are compounded by a pervasive sense that Equality Act enforcement is not a credible threat to essential service providers. Many essential service providers have well developed compliance functions and pay close attention to their sector regulator. But, based on our engagement with providers and other sector experts, it seems that Equality Act compliance is not treated with similar priority and is not closely monitored at many firms.

At present it seems that this perception is justified. The regulator responsible does not focus on essential services – see below for more information – and it is difficult for individuals to enforce their rights. If an individual thinks that their rights have been breached they can take a provider to court, but this is an arduous and expensive process. There is little precedent of people taking cases relating to essential services providers duties under the Equality Act, and we could find no precedent of people with mental health problems doing so. All of this contributes to essential service providers not prioritising Equality Act compliance.

36. Ofcom. Treating vulnerable customers fairly: A guide for phone, broadband and pay-TV providers. 2020, and FCA. FG21/1 Guidance for firms on the fair treatment of vulnerable customers. 2021.

37. Supplier licence condition 26. Ofgem. Licences and licence conditions. <https://www.ofgem.gov.uk/industry-licensing/licences-and-licence-conditions>

38. Ofwat. Practitioners' pack for water companies. 2016.

### 3.3 Regulation

#### The Equality and Human Rights Commission

The Equality and Human Rights Commission (EHRC), the body responsible for Equality Act enforcement, does not have an active supervision function and it is too small to effectively police compliance with the Act. The Equality Act is a broad piece of legislation with far-reaching effects, so the EHRC has to prioritise its work carefully and judge where to focus its limited resources. Essential services have not been identified as an area of focus in EHRC's draft strategic plan for 2022-2025 and the EHRC has previously said that it lacks the resources to monitor compliance in financial service markets.<sup>39</sup> This strongly contributes to a perception among essential service providers that Equality Act enforcement is not a credible threat.

As highlighted in Section one, sector regulators have their own responsibilities under the Equality Act. Reviewing published strategy documents and reports on equality, it is clear that all essential service regulators are taking important steps to advance equality of opportunity. All regulators have a clear focus on their workforce, including on improving the diversity of staff and creating an inclusive work culture. However, in general, it seems that there has been less focus on the everyday business of regulation, on how policy and other regulatory tools can advance equality and influence the behaviour of regulated firms. The way that sector regulators currently interpret their PSED is not driving regulated providers to meet their Equality Act obligations.

#### Essential service sector regulators

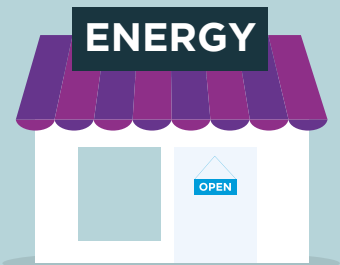
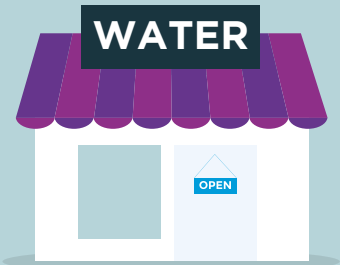
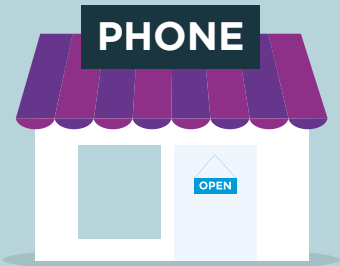
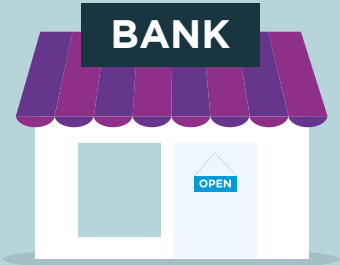
Sector regulators like the FCA, Ofgem, Ofcom and Ofwat are relatively well-resourced, are closely listened to by providers that they regulate and have a good understanding of their conduct. In many ways, they are well placed to ensure that providers are making reasonable adjustments for disabled customers. However, they have no powers relating to Equality Act enforcement and already have busy work programmes without considering additional areas of provider conduct. In practice, this means that sector regulators do little to actively encourage or supervise compliance with the Equality Act.<sup>40</sup>

<sup>39</sup>. EHRC. Draft for consultation. Our strategic plan for 2022-25. 2021 and House of Commons Treasury Committee. Consumers' access to financial services. 2019.

<sup>40</sup>. The FCA did remind financial service providers of their obligations under the Equality Act 2010, in recent guidance. FCA. FG21/1 Guidance for firms on the fair treatment of vulnerable customers. 2021.

### Section three summary

- If people using essential services aren't receiving the Equality Act protections they are entitled to, the primary responsibility lies with the firms involved. After over a decade of the Act being in place, all firms should have developed adjustments for people with mental health problems.
- People with mental health problems can find it difficult to exercise their rights under the Equality Act, due to low awareness of what they are entitled to and psychological barriers that make it harder to ask for help or raise complaints.
- Essential service providers are often uncertain what sort of adjustments to offer for people with mental health problems and do not see Equality Act enforcement as a credible threat.
- There is a lack of active enforcement of the Equality Act. The regulator responsible does not focus on essential services and essential service regulators lack the power to enforce the Act.



## Section four: Raising standards in essential services

Too often, dealing with essential services is a stressful and frustrating experience for people with mental health problems. Services often aren't prepared for common challenges that this large customer group faces, and it can feel like they simply don't understand mental health problems.

"The lack of understanding from these companies & banks, makes life very difficult and always results in people like me feeling empty and desperate. Because your illness isn't visible they assume there is nothing wrong with you."

*Expert by experience*

In this section, we set out steps that essential service providers, regulators and government can take to improve compliance with the Equality Act and, most importantly, improve support for people with mental health problems. Our recommendations should help essential service providers to understand how to meet their Equality Act obligations to people with mental health problems and we also address some of the policy challenges explored in section three.

### 4.1 Essential service providers

Essential service providers have a legal duty to anticipate the needs of disabled customers and make reasonable adjustments. Providers also have a commercial incentive to get things right for people with mental health problems. One in four people experience a mental health problem each year, and the way that providers support people with mental health problems is an increasingly important consumer consideration.

Six in ten people with mental health problems (59%) say they would be more likely to choose a provider if they knew it offered additional support for people with mental health problems, with just one in ten disagreeing (11%).<sup>41</sup>

We've worked closely with members of our Research Community to explore the challenges that people with mental health problems face when dealing with essential service providers and consider what sort of adjustments could help to address these common problems. Based on this experience, we set out two key recommendations to help providers meet their obligations, along with practical detail about how to achieve this.

We recommend that all essential service providers:

- offer at least a basic set of adjustments to address the most common challenges that customers with mental health problems face
- improve their processes for encouraging and managing customer disclosures of mental health problems.

Below is a brief summary of key steps to take. Money and Mental Health can also practically support providers to make these changes, through our Mental Health Accessible programme.<sup>42</sup>

41. Money and Mental Health analysis of Opinium online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative.

42. For more information please contact Alice Rose, who leads the Mental Health Accessible programme, via [alice.rose@moneyandmentalhealth.org](mailto:alice.rose@moneyandmentalhealth.org).



## Basic adjustments for people with mental health problems

We have identified seven basic adjustments that all essential service providers should have as options to offer customers with mental health problems:

1. The option to opt out of certain communications channels
2. Simplified versions of written communications
3. Reminders
4. Money management tools
5. Adjustments to help customers feel in control when staff visit their home
6. Extra help with decision making
7. Flexible third party access options

We strongly recommend that providers involve people with mental health problems in the design and testing of these options.

These basic adjustments may also be reasonable adjustments for disabled people without mental health problems, and they could be useful for other customers too, so providers should consider offering them more broadly. Providers should consider taking a universal design approach, to create a service that is accessible for people with a wide range of disabilities and needs. Doing so could help providers to meet their duty to anticipate the needs of disabled people under the Equality Act.

## 1. The option to opt out of certain communications channels

Many customers with mental health problems find it acutely stressful to use certain communication channels, and some will be unable to receive messages sent using inappropriate channels. This is not simply a matter of preference: an unexpected phone call can trigger panic attacks or even suicidal ideation.

"When my mental health is bad, I live in a place of fear, shame, worry and anxiety... I can't make phone calls, or even answer the phone when I get to this stage. I struggle to use the phone at any time, even to call my family."

*Expert by experience*

To address this, providers should enable customers to opt out of communication channels that they find difficult or distressing to use. More than half of people with mental health problems who are protected by the Equality Act would find the option to opt out of phone calls useful (52%), nearly five million people, and over one in three would value the option to opt out of letters (35%).<sup>43</sup> Most providers already use multiple outbound communication channels, so this adjustment shouldn't require significant development, rather it requires providers to use their existing channels more effectively. Offering this inexpensive adjustment will reduce customer anxiety, raise the likelihood of customers engaging with information and help providers to demonstrate that they understand mental health problems.

43. Money and Mental Health analysis of ONS mid-year population estimates 2020 and Opinium online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative.

## 2. Simplified versions of written communications

People with mental health problems often struggle to understand important written information that providers share with them, like bills, terms and conditions and policy documents. This can lead to missed payments, people misunderstanding important account terms and a range of other harm.

"I don't really understand the bills and the way they break it down. I find all the small print pages too difficult to read so I never read them."

*Expert by experience*

To adjust for these difficulties, all providers should offer simplified versions of written communications that are designed with the needs of people with mental health problems in mind. More than four in ten (44%) people with mental health problems who are protected by the Equality Act would find simplified versions of written communications useful, roughly 4.25 million people.<sup>44</sup>

Providers should consider the following key principles for simplified written communications:

- Remove all technical language, or explain it in non-technical terms
- Minimise the quantity of content as much as possible and leave plenty of space between content
- Highlight key messages or action points
- Use bullet points to break down complex tasks or processes

- Minimise use of numbers and carefully explain any figures that are used
- Use a supportive tone and provide prominent information about how a customer can access additional support if needed
- Develop and test written communications with people with mental health problems.

"Provide the key points at the top of the letter in bold. That way I can prioritise how urgently I need to try and understand the rest of the letter. Can it wait a day or two until I'm in a better headspace, or do I need to use up some of my limited resources today in trying to deal with this?"

*Expert by experience*

For the same reasons, we also find significant demand for essential service providers to offer simplified versions of various other aspects of their services. In particular, many Research Community respondents felt that simplified tariffs or pricing structures would make it easier for them to understand their costs and avoid financial difficulty when unwell. Offering products with fewer features, such as a basic bank account, could also be a reasonable adjustment for someone who struggles to manage a current account when unwell but needs access to banking.

<sup>44</sup>. Ibid.

### 3. Reminders

Memory problems are a common symptom of several mental health conditions, and a side effect of some medication prescribed for poor mental health.<sup>45</sup> Without support, people with memory problems will often miss payments, even when they can afford to pay, and can struggle to engage with support from providers.

“Due to my issues I have short term memory issues, send a text message saying ‘your payment for ..... is due today’, or an email saying the same thing. If you are having problems contact and have a small team that can deal and have an understanding of mental health issues”

*Expert by experience*

The tone of reminder messages is crucial. Providers should design reminders that are supportive and informative, as messages that are perceived as threatening can be counterproductive and cause customers to disengage.

“[Providers should] look at the wording of their messaging and understand that people prefer different methods of communication during periods of mental health.”

*Expert by experience*

Providers can make a simple, but effective, adjustment by offering additional reminders for customers with memory problems. Some essential service providers do offer payment reminders, often as an opt-in service, but they are not consistently suggested as an adjustment to customers with mental health problems. Half of people with mental health problems who are protected by the Equality Act would find a reminder message when payments are due useful (49%), but just one in four have ever been offered this (24%).<sup>46</sup> Nor would the benefit of reminders be limited to payments; letting customers know when meter readings are due or other actions that are required would also be welcome. For instance, more than half of people with mental health problems who are protected under the Equality Act would find it useful to be sent a summary note after speaking to a provider (51%), nearly 5 million people.<sup>47</sup>

<sup>45</sup>. Holkar M. Seeing through the fog. Money and Mental Health Policy Institute. 2017.

<sup>46</sup>. Money and Mental Health analysis of Opinium online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative.

<sup>47</sup>. Money and Mental Health analysis of ONS mid-year population estimates 2020 and Opinium online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative.

#### 4. Money management tools

Mental health problems often have a significant impact on people's financial capability, making it harder to be a conscientious, proactive consumer and even to regulate financial behaviour. This is a major driver of higher levels of problem debt among people with mental health problems. Difficulties managing money are the most common reason that people with mental health problems cite for being behind on payments, ahead of other reasons such as income shocks and unexpected costs.<sup>48</sup>

"I spend more money when I'm on a manic high. This has led me into debt in the past."

*Expert by experience*

Essential service providers are well placed to offer practical tools to help customers use their services more safely and avoid these problems. We have identified two main categories of tools that providers could offer as adjustments:

- **Tools that automate or offer support with complex aspects of money management** – for example tracking spending, calculating and adjusting budgets, comparing prices and building up savings. Nearly four in ten people with mental health problems who are protected under the Equality Act would find tools to help with budgeting useful (37%).<sup>49</sup> Energy, telecoms and water providers could provide tools that help customers monitor their consumption and forecast costs.

- **Control settings** – that allow people to protect themselves from problematic behaviour during periods of poor mental health by putting blocks or limits in place. This could include spending limits and the ability to block transactions to certain types of merchant or at certain times. For control settings to be effective it must not be possible to remove or loosen them immediately. Mobile phone providers could provide similar options, such as the ability to limit data usage or disable spending on additional services, for instance on apps, through a phone contract.

Building a new tool will cost money, but this may be considered reasonable given the number of disabled customers who struggle with money management and the extent of the harm that these difficulties can cause. Tools developed for people with mental health problems will also often deliver value for other customers, speeding up or removing frustrating or boring tasks for people without mental health problems.

<sup>48</sup>. Bond N and D'Arcy C. The state we're in. Money and Mental Health Policy Institute. 2021.

<sup>49</sup>. Money and Mental Health analysis of Opinium online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative.

## 5. Adjustments to help customers feel in control when staff visit their home

For many people with mental health problems, their home is a safe place which plays an important role in their psychological security. A visit from an essential service provider, for instance to read a meter or resolve a broadband issue, can jeopardise this sense of security and cause significant distress if poorly handled.

“Our homes are our one safe space and anyone entering this needs to understand that this is extremely important to people with mental health.”

*Expert by experience*

There are a number of small adjustments that providers can make to help customers retain a sense of control and avoid causing distress when a staff member visits. All providers should offer customers the option to book an appointment at a time that works for them, rather than visiting without warning or designating a time. This puts the customer in control and allows them to prepare for the visit, for instance to invite a friend over for support or to leave the house before staff arrive and let someone else handle the interaction.

“The anxiety of waiting and waiting and perhaps nobody coming in the end exacerbates the worry of anyone coming at any time. At least a fixed appointment minimises the time for worrying as far as is possible.”

*Expert by experience*

Providers can further reassure customers with mental health problems by offering a password scheme, so that all visiting staff use a password to verify that they work for the provider. This simple step can ease fears about abuse and scams. Many energy providers offer this option, and it has provided huge relief for some members of our Research Community.

Providers who send staff to customer's homes should be proactive, asking customers with mental health problems about their needs and exploring what adjustments they can offer if a visit is required. All staff that visit people's homes should receive at least basic training to help them understand mental health problems and respond appropriately.

“My SSE meter reader gentleman is lovely – he will stand and chat to me and waits until I am relaxed before he even tries to come into my home. He is incredibly friendly in a professional manner – not forceful in any way.”

*Expert by experience*

## 6. Extra help with decision making

Poor mental health commonly affects people's ability to think clearly and make decisions, at times it can affect people's mental capacity to make certain decisions. Complex decisions, like choices about repayment plans or tariffs, can seem overwhelming without support, and even seemingly small decisions about essential services can become time consuming and stressful. The way that providers handle interactions with customers experiencing these difficulties has a significant bearing on their ability to make decisions.

"Support to understand how to read, and digest, the information received, or required by the company would be beneficial. Knowledge is power and if we don't feel knowledgeable then that's where the problems can start."

*Expert by experience*

Almost half of people with mental health problems who are protected by the Equality Act would find extra help when making decisions about their account useful (44%), over 4.25 million people.<sup>50</sup> Providers can make adjustments before, during and after interactions with customers who need help with decision making, to support them to make independent decisions. Providers should be mindful that a customer's decision-making ability, and the need for support, will often fluctuate with their mental health.

- **Before** – Frontline staff should be prepared with training and practical resources, like the BRICE protocol,<sup>51</sup> to help them support customers who need help with decision-making. Before a complex interaction, for instance a conversation about debt repayment, providers should share information in advance to help the customer feel prepared. This should contain basic details about what the conversation will entail and what the customer will need for the conversation.
- **During** – Staff may need to share information more slowly, break decisions into chunks and check that the customer understands what is being discussed as they go. Some customers will need more time to make decisions and staff should not put them under pressure, taking multiple sessions if required to resolve complex issues. Staff should record information about customers' individual needs and tips for supporting that customer in their notes.
- **After** – Providers should send a follow-up message to reiterate any decisions that were made and why. This can be practically useful for customers and can help to ensure that there is a shared understanding of what was decided.

1. Ask how that [mental health problems] might affect any conversation. E.g when stressed and anxious I can be slow to respond and sometimes ruder than normal or need things repeated.
2. Check for understanding more than they might – maybe ask me to tell them what I understand by what they have said.
3. Take their time – feeling rushed is a real trigger."

*Expert by experience*

<sup>50</sup>. Money and Mental Health analysis of ONS mid-year population estimates 2020 and Opinium online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative.

<sup>51</sup>. The BRUCE protocol is a conversation guide to help frontline staff identify and support customers with decision-making difficulties. Fitch C. Lending and vulnerability: An introductory guide to mental capacity. Money Advice Trust. 2018.

## 7. Flexible third party access options

People with mental health problems often rely on support from friends and family to manage their finances and deal with essential services, particularly at times when they are acutely unwell and unable to manage independently. However, tools for sharing decision-making, like Power of Attorney, don't work well for people with mental health problems, leading many to rely on risky workarounds like sharing passwords and PINs.<sup>52</sup> This lack of appropriate tools exposes people with mental health problems to a risk of abuse and means that some can't get the support they need.

"I ask my husband to deal with the calls but often the companies will not speak to him and insist on talking to me. This makes me very anxious."

*Expert by experience*

Providers should take steps to publicise existing flexible third party access options and should ensure that all customers who they know have mental health problems are offered this support.

Beyond these limited examples, all essential service providers, and particularly financial service providers, should develop tools that facilitate flexible and safe third party access. This should include tools that could give a third party visibility over an account or that allow customers to delegate control over some parts of an account but not others, for example, the ability to set and manage spending limits, but not control day-to-day spending.

We find strong demand for flexible delegation tools that would allow people with mental health problems to delegate limited powers or account visibility to a third party, without ceding full control. Some providers do offer more flexible options. For instance, energy companies can send copies of bills and other correspondence to a nominated third party, and some banks offer a 'carers card', an additional debit card that a third party can use for limited purposes such as grocery shopping. However, even these limited examples are not routinely offered to customers with mental health problems; four in ten people with mental health problems who are protected by the Equality Act would find the option to nominate a trusted person to help manage their account useful (38%), but just one in seven (13%) have been offered this.<sup>53</sup>

<sup>52</sup>. Bond N, Evans K and Holkar M. A little help from my friends. Money and Mental Health Policy Institute. 2019.

<sup>53</sup>. Money and Mental Health analysis of Opinium online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative.

## Disclosure of mental health problems

In order to provide reasonable adjustments to customers with mental health problems, essential service providers need to know who they are and what they need. To achieve this, providers must take steps both to encourage customers with mental health problems to open up and also to ensure that every disclosure is handled sensitively and effectively.

Not every customer with mental health problems will feel comfortable disclosing information about their condition, and providers still have a duty to anticipate the needs of disabled customers that don't share this information.

Providers must recognise that, for many people, telling an essential service provider about your mental health problems is a daunting prospect. This information is often deeply personal and even the act of telling a provider can be traumatising, reminding people of the most difficult times in their lives. Providers must build processes that recognise the bold step that the customer has taken and treat them with respect.

We have developed a set of 12 principles for encouraging and managing disclosure of mental health problems.

- **Be proactive about your support offering**  
– Proactively tell customers about the value of disclosing problems and explain what support they can offer people with mental health problems specifically.
- **Address common concerns** – providers should address common concerns in disclosure conversations and in materials about the value of disclosure e.g. impact on credit score.
- **Provide multiple channels for disclosure** – ensure there are multiple communication channels that customers can use to complete a full disclosure journey.

- **Record customer needs, focusing on practical information** – recording 'this customer needs support with their memory' is more instructive than simply recording 'depression'.

"I don't understand the fact that you get the strength to inform the so-called essential providers and they don't keep a record of it. How hard is it to keep a record of your needs, but no instead you have to inform them each and every time you contact them."

*Expert by experience*

- **Embed established good practice for key conversations** – providers should embed the TEXAS and BLAKE protocols to help staff to structure sensitive conversations and ensure they get the basics right.
- **Compassion and reassurance go a long way**  
– living with mental health problems can be an isolating experience, and even people struggling with common challenges can feel alone and guilty for asking for help. Staff should be compassionate and reassure customers that they are here to help.

"When I am afraid or my trauma has been triggered my thinking collapses and I can't cope. They become frightening and persecuting and it's one big mess. I need careful handling. Reassurance, warmth, empathy and understanding. I am not stupid I am mentally unwell."

*Expert by experience*



- **Don't belittle or deny mental health problems** – too often we hear examples of essential service staff dismissing the impact of mental health problems or suggesting that a customer is pretending to be unwell. Providers must be clear with staff that this is not acceptable.

"Mental health [problems are] rapidly increasing so it's no longer unusual to deal with someone with depression like me. So more training should be normal with public facing operatives."

*Expert by experience*

- **Ask what you can do to help, but don't expect the customer to have all the answers** – when a customer discloses a mental health problem, this is an ideal opportunity to understand their needs. Staff should always ask what they can do to address any challenges the customer faces when using the service. However, customers can't be expected to have all the answers. Staff can help by describing adjustments that are often useful for people with mental health problems and explaining how they can practically help.

"Don't be afraid to ask me, and don't be afraid to ask me things they don't understand. It's refreshing and appreciated when people try to understand. It helps me and it educates them."

*Expert by experience*

- **Mental health training for all frontline staff** – one in four people will experience mental health problems each year, rising to half of people in problem debt.<sup>54</sup> All frontline staff will encounter customers with mental health problems and they must receive at least basic training to help them identify signs of distress and respond appropriately.<sup>55</sup>

- **Provide guidance for staff** – training is essential, but not sufficient. Providers should equip staff with resources that they can use in-conversation, such as interactive tools or intranet pages, to help them understand and support customers with mental health problems. This should include information about common challenges that people with mental health problems struggle with and adjustments that can be offered to address them.
- **Clear referral processes** – customers will sometimes present with needs that are beyond the remit or expertise of essential service staff. It is essential that providers have clear processes for these instances, so that staff are confident how and when to refer customers to key services such as specialist mental health services, the Samaritans and free debt advice. Wherever possible, customers should be offered warm referrals to support services, as more vulnerable customers can struggle to follow signposting.
- **Focus on quality** – managing disclosures of mental health problems effectively is a key element of treating vulnerable customers fairly and it should be a focus of quality assurance. In particular, we recommend that providers ensure that staff are following the TEXAS and BLAKE protocols, recording relevant information about customer needs and offering appropriate reasonable adjustments.

<sup>54</sup>. McManus S et al. Adult psychiatric morbidity in England, 2007. Results of a household survey. NHS Information Centre for Health and Social Care. 2009 and Holkar M. Debt and mental health: A statistical update. Money and Mental Health Policy Institute. 2019.

<sup>55</sup>. Our practical guide, The need to know, contains detailed information on understanding different mental health problems. Bond N and Fitch C. The need to know. Money and Mental Health Policy Institute and Money Advice Trust. 2020.

## 4.2 Regulators

### Equality and Human Rights Commission

The EHRC is failing in its responsibility to enforce protections for people with mental health problems in key essential service sectors. The regulator has not focused on financial services, energy, telecoms or the water sector, which appears to have led to firms disregarding or simply not understanding their legal responsibilities. For people with mental health problems, this means that common accessibility needs are not being routinely met, so dealing with these services is often a stressful experience and people with mental health problems have significantly higher rates of problem debt.

### Make essential service compliance a priority

The services covered in this paper are essentials of modern life that everyone has to deal with, regardless of their mental health or any other protected characteristic, and millions are affected by the challenges set out in this paper. We estimate that 18% of the adult population, equivalent to nearly 10 million people, have a mental health problem that satisfies the Equality Act definition of disability.<sup>56</sup> Our evidence suggests that essential service providers are consistently failing in their anticipatory duty towards disabled people with mental health problems and that this amounts to a serious and systematic breach of the Equality Act. We urge the EHRC to make compliance in these sectors a priority and consider how it can best use its regulatory toolkit to drive up awareness of and compliance with the Act.

As an urgent first step, we recommend that the EHRC writes to essential service providers to remind them of their duties under the Equality Act, in particular their duty to anticipate the needs of disabled people with mental health problems. We recommend that the EHRC makes it clear that it is prepared to take enforcement action against firms that are found to have breached their legal responsibilities.

Given the extent of harm that we have found, we also recommend that the EHRC launches an inquiry into compliance with the Equality Act in the financial services, energy, telecoms and water sectors. This should focus on firms' treatment of disabled people with mental health problems, from their processes for anticipating people's needs to their provision of reasonable adjustments. The EHRC should also consider the role that sector regulators play and how they use their PSED to improve compliance among firms that they regulate.

### Build a simple reporting tool

The problems highlighted in this paper are compounded by the onerous mechanism for individuals to exercise their rights. People with mental health problems can find it harder to advocate for themselves or raise complaints, in general, and are very unlikely to take an essential service provider to court, even if they are confident that their rights have been breached. This means that disabled people don't receive the protection they are entitled to, but also that information about potential Equality Act breaches is not made public.

To address this, we recommend that the EHRC create a simple tool for people to log suspected Equality Act breaches, so that people who are not willing or able to take a provider to court can still have their voice heard. The EHRC should use this as an intelligence source, to better understand people's experience of breaches and inform its enforcement priorities. This simple step could drastically improve the EHRC's oversight of Equality Act compliance and help it to be a more responsive and data-led regulator. This tool could be delivered through the EHRC itself or the Equality Advisory and Support Service, an existing service that provides guidance on equality and human rights issues, as long as data is fed into the EHRC. To be effective, this tool must be simple to use and accessible for a wide range of disabled people and should be launched with a promotional campaign.

<sup>56</sup>. Money and Mental Health analysis of ONS mid-year population estimates 2020 and Opinium online survey of 2,000 people, carried out 29 October – 2 November 2021. Data is weighted to be nationally representative.

## Essential service regulators

Essential service regulators are not responsible for Equality Act enforcement, but they should see the Act as a powerful and complementary consumer protection. Sector regulators can take simple steps to encourage Equality Act compliance among the firms they regulate, which should help them to satisfy both their own PSED and their own statutory consumer protection duties.<sup>57</sup>

We recommend that essential service regulators work in partnership with the EHRC, to boost oversight and awareness of the Equality Act, and make influencing regulated providers a central part of their PSED compliance.

## Work in partnership with the Equality and Human Rights Commission

Partnership working is vital to improving compliance with the Equality Act. Alone, the EHRC lacks the resources and expertise to effectively enforce the Equality Act. Other regulators can help to ensure that providers in their sectors understand their responsibilities and boost compliance, by working with the EHRC. All essential service regulators should establish a formal partnership with the EHRC, to enable them to work together more closely and to share data. We welcome the FCA's recent memorandum of understanding with the EHRC.<sup>58</sup> Establishing a partnership will send a clear signal to providers and lend weight to the EHRC's work in these industries. We recommend that regulators take four key actions to maximise the value of the relationship:

- **Make referrals** – when a sector regulator suspects that a provider it regulates may have breached its Equality Act duties, it should refer this case to EHRC to investigate. For example, a regulator may see signs that a provider is not anticipating disabled customers' needs or is failing to offer reasonable adjustments as part of its own supervision or enforcement work.
- **Shine a light** – regulators' convening powers are a powerful tool. Initiatives like the FCA women's economic empowerment techsprint and conference and Ofgem's inclusion, equality and diversity conference have shone a light on important equality issues. We recommend that regulators work with the EHRC to engage with providers and raise awareness of the Equality Act. We recommend that reasonable adjustment for people with mental health problems and the ongoing process of anticipating disabled people's needs are both priority focus areas.
- **Share intelligence** – regulators should use partnerships with the EHRC to share relevant intelligence, such as information about changes in the sector that may have a bearing on the EHRC's work. For example, artificial intelligence and emerging digital technologies is a strategic priority for the EHRC and there is considerable data-driven innovation in essential service markets.<sup>59</sup> Regulators sharing intelligence could practically help the EHRC to deliver this aspect of its strategic plan and ensure that essential services are given due consideration. Likewise, EHRC intelligence, for instance information on how the Equality Act applies to automated decision-making, could be practically useful for sector regulators.

<sup>57</sup>. All essential service regulators have relevant consumer protection objectives. Ofgem's principal statutory objective is to protect the interests of existing and future consumers, in relation to the supply of gas and electricity. Ofcom's principal statutory duty is to further the interests of citizens and consumers in relation to communications matters. Ofwat has a statutory duty to protect the interests of consumers, and the FCA has a statutory operational objective to secure an appropriate degree of protection for consumers.

<sup>58</sup>. FCA. Memorandum of understanding. 2021. <https://www.fca.org.uk/publication/mou/mou-fca-ehrc.pdf>

<sup>59</sup>. EHRC. Draft for consultation. Our strategic plan for 2022-25. 2021.

- **Practically support the EHRC** – essential service regulators should also practically support the EHRC to regulate more effectively. For example, the EHRC may benefit from sector regulator insight when carrying out engagement, investigation or enforcement work related to firms in their sector. Regulators should consider seconding staff to the EHRC to support particular projects. This would bring an added bonus, as seconded staff would return with expertise about the Equality Act and how the EHRC works.

### Public Sector Equality Duty

Essential service regulators should recognise that the influence they have over providers that they regulate is their most powerful lever to advance equality. To comply with their public sector equality duty, we recommend that regulators take a more systematic approach to highlighting the importance of the Equality Act and making policy that advances equality of opportunity.

One simple step that regulators can take is to systematically remind providers about their responsibilities under the Equality Act. Across their full range of activity, whenever regulators are engaging with providers on the fair treatment of vulnerable customers they should look for opportunities to highlight this important consumer protection. Little nudges in guidance, policy announcements or in bilateral meetings with providers could significantly raise the profile of the Equality Act and encourage compliance teams to take it more seriously. For example, we were pleased to see the FCA specifically highlight providers responsibilities under the Equality Act in its guidance for firms on the fair treatment of vulnerable customers.<sup>60</sup>

When considering steps they can take to advance equality of opportunity, we recommend that regulators are data-led and focus on areas where there is evidence of disadvantage or discrimination. To inform this, regulators should routinely collect data on the experiences and outcomes of protected groups in their markets, and work with expert consumer organisations to gain deeper insight into the experience of particular groups. While the Equality Act does not require equal outcomes, where outcomes data is significantly divergent this may be a strong indicator that people are being disadvantaged due to their protected characteristics. Regulators should publish regular summary statistics and share this data with the EHRC to inform its work.

At their best, equality impact assessments (EIAs) can be a powerful tool, to help ensure that policy is inclusive and lawful, while poor quality assessments can seem a pointless box-ticking exercise. Regulators' EIAs are sometimes worryingly scant, given the range of protected groups that they are required to consider. We recommend that regulators consider the following five key elements, in order to produce high quality EIAs:

- **Consultation** – the most effective way for regulators to understand the likely impact of a policy change on people with protected characteristics is to seek the views of people with lived experience of those characteristics or organisations that represent them. Regulators should proactively reach out to these groups at an early stage of policy development and consider primary research for groups where there is a lack of information. Regulators should also consider how questions about equality and diversity impacts are positioned in policy consultations. Often, these questions are framed as a compliance exercise and can feel peripheral. To generate more useful input from respondents, regulators should explain that understanding the impacts on different groups is key to making good policy and make the case for respondents to properly consider these questions.

<sup>60</sup>. FCA. FG21/1 Guidance for firms on the fair treatment of vulnerable customers. 2021

- **Cost-benefit analysis** – when assessing the potential impact of a policy on different groups, regulators must not focus narrowly on financial impacts. Regulators should always consider the risk of psychological harm that both action and inaction could entail, as well as other impacts on people's lives.
- **Audit** – to ensure that EIAs are used appropriately and are an effective tool, regulators should routinely audit their assessments to assure quality
- **Policy review** – as part of the policy review process, regulators should examine how enacted policy has affected different groups protected under the Equality Act. This should test the quality of equality impact assessments and regulators should ensure that lessons learnt are fed back into the EIA process, particularly when assumptions or forecasts did not hold.
- **Accountability** – the PSED applies to all of a regulator's functions and EIAs are a key tool for ensuring that the duty is consistently applied. Failure to comply with the Duty can expose a regulator to legal risk, including judicial review. Given this, we recommend that it is proportionate for a board member to be designated responsibility for EIAs.

### 4.3 Government

The Equality Act is a vital protection with ambitious aims to better society. However, as the EHRC itself acknowledges, people's experiences often don't reflect what is set out in law.<sup>61</sup> In this paper we set out practical steps that the EHRC can take to regulate more efficiently and improve compliance, by working alongside sector regulators. However, fundamentally the EHRC is under-resourced for its broad remit, and this strongly contributes to non-compliance, including persistent discrimination and services that don't work for disabled people. We recommend that the government increases funding for the EHRC, so that it is better able to meet its responsibilities. A better-resourced regulator would have a tangible impact on the lives of millions of people across the country, advancing equality of opportunity and enabling more people to fully participate in society and receive fair treatment in vital markets.

At a minimum, we recommend that the government introduces new funding to enable the EHRC to step up its engagement with sector regulators and to develop a new reporting tool to allow people to log suspected Equality Act breaches. As set out in our recommendations for regulators, these practical steps would drastically improve the EHRC's oversight of Equality Act compliance and help it to regulate more effectively.

61. <https://www.equalityhumanrights.com/en/about-us/what-we-do>

## Conclusion

It's been more than a decade since the Equality Act was introduced, with similar anti-discriminatory legislation preceding it. Despite this, our evidence suggests that many essential service providers are failing in their duty to anticipate and meet the needs of people with mental health problems. While the rhetoric of inclusion has become much more common over that time, too often dealing with these services is still a stressful and difficult experience for people with mental health problems.

These experiences can worsen people's mental health and can directly drive worse financial outcomes.

Enhanced enforcement of the Equality Act is therefore essential, and this paper has set out what needs to change to make that happen.







This report was supported by Impact on Urban Health.

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