

## **'Reasonable adjustments' and the DDA: DDA Factsheet 6**

Whilst providing a general introduction to the Act, the information and examples in this guide give particular consideration to the position of blind and partially sighted people.

The guide looks at the obligations in the Disability Discrimination Act (DDA) relating to "reasonable adjustments" in the provision of goods, facilities and services (apart from the very specific provisions relating to employment services). For a more general look at this section of the Act, please see

- Access to goods, facilities and services under the DDA
- Public authority functions under the DDA
- Private clubs and the DDA.

Please note that this information does not cover the provision or use of transport vehicles - these are dealt with in 'Transport vehicles and the DDA'.

### **Who has rights under the Act?**

The Act gives rights to disabled people - those with a "physical or mental impairment which has a substantial and long term adverse effect on the ability to carry out normal day to day activities". If you have been certified as blind or partially sighted by a consultant ophthalmologist or if you are registered as blind or partially sighted with a local authority, you will automatically be regarded as disabled for the purposes of the Act (although this does not apply to Northern Ireland).

Most blind and partially sighted people are likely to be "disabled" within the meaning of the Act - see 'Definition of disability under the DDA' for more information.

## Who has duties under the Act?

The duty to make reasonable adjustments applies to anyone providing goods, facilities or services to the public, whether for a fee or not. This includes:

- banks
- GPs
- places of worship
- local authority departments such as social services and environmental health when carrying out services
- leisure centres
- hotels and restaurants.

It also applies to public authorities when carrying out a public authority function – such as making benefit determinations, subjecting people to immigration control, or arresting someone – and to private clubs.

## Reasonable adjustments - changes that service providers have to make

These provisions apply to service providers, public authorities and private clubs.

### 1 Practices, policies and procedures

Where a service provider has a practice, policy or procedure which makes it impossible or unreasonably difficult for you to use their service, they will have to take reasonable steps to change that practice, policy or procedure so that you can use the service. Broadly similar provisions, with slightly different wording to reflect the different nature of what they do, applies to public authorities carrying out functions and to private clubs.

### What are "practices, policies and procedures"?

These are defined as follows:

- A **practice** will be what a service provider / public authority / private club actually does (referred to collectively as "service providers").
- A **policy** will be what a service provider intends to do.
- A **procedure** will be how a service provider plans to go about doing it.

Examples of policies that may need to be changed include:

- a policy of admitting no dogs
- a health and safety policy banning blind people from entering a nightclub
- a policy of charging for wheelchair assistance at an airport.

### **An end to guide / assistance dog bans?**

The provisions should end some of the common forms of discrimination faced by guide / assistance dog users in that shops, restaurants or public places of entertainment which have a 'no dogs' policy will need to revise their policies to allow for the admittance of guide / assistance dogs. In fact, most of the cases which have been brought before the county court under this part of the Act have concerned people being refused entry to places because of their guide / assistance dogs.

#### **For example:**

A DIY superstore has a policy of not allowing dogs onto its premises. Members of staff are instructed to prevent anyone with a dog from entering the superstore. The 'no dogs' policy is enforced in practice by this procedure. The policy makes it unreasonably difficult for disabled people accompanied by a guide / assistance dog to use the DIY superstore. The superstore has a duty to take such steps as are reasonable for it to have to take to avoid that effect and to make its services accessible to disabled people. It decides to amend its 'no dogs' policy by allowing an exception for disabled people accompanied by a guide / assistance dog. This is likely to be a reasonable step for the superstore to have to take.

Mr H's local restaurant was taken over by a new owner, who would not allow Mr H to use the restaurant with his guide dog. Mr H approached RNIB who took on his case. Following a county court hearing, Mr H was awarded £1,000 in compensation and a court injunction to require the restaurant owner to admit him with his guide dog.

## **2 Auxiliary aids or services**

Where an auxiliary aid or service (such as information in alternative formats) would enable or make it easier for disabled people to use a service / public authority / private club, service providers should take reasonable steps to supply such aids or services.

## **What is an auxiliary aid or service?**

The Act itself gives two examples of these: the provision of information on audiotape and the provision of a sign language interpreter. The Code of Practice adds the following examples:

- readers
- information on computer disk
- information on audio tape
- telephone service to supplement other information
- spoken announcements or verbal communication
- accessible websites
- assistance with guiding
- audio description services
- large print or tactile maps / plans and three dimensional models
- touch facilities.

Signage would also amount to an auxiliary aid or service, as could markings on the stairs to ensure that the edge is visible.

### **For example:**

- A supermarket instructs one of its employees to find items required by a visually impaired person for them. This is an example of an auxiliary service. RNIB has had a number of cases involving the provision of assistance from supermarkets.
- A private club holds a talk by a guest speaker. It provides copies of the PowerPoint presentation that will be used by the speaker to a visually impaired member on disc, prior to the presentation.
- A benefits office provides information about a visually impaired person's benefit entitlement in an accessible format.

## **3 Physical features**

Where a physical feature, for example, something to do with the design of or access to buildings, or even the scope of a building, makes it impossible or unreasonably difficult for disabled people to use the service, the service provider has to take reasonable steps to:

- remove the feature
- alter it so that it no longer has that effect
- provide a reasonable means of avoiding the feature

- provide a reasonable method of making the service in question available to disabled people.

## **What is a physical feature?**

The Government has defined physical features in regulations; generally they are things such as steps, furniture, signs attached to the wall etc. In the case of *Ross v Ryanair*, the sheer size / scope of the airport was a 'physical feature', and so there was an obligation to find a means of avoiding it (the use of a wheelchair).

**For example:** An inquiry point is located on the third floor of a Government office building and is accessed by a flight of stairs. This makes it impossible or unreasonably difficult for some disabled people to get to it. If it is not practicable to remove or alter the feature, a means of avoiding the feature might be the installation of a lift. Alternatively, the Government department should consider finding another way of providing the service, such as having someone on the ground floor to answer enquiries.

Where a physical feature meets the provisions of Approved Document M (a detailed guide to accessibility of certain features), the service provider will not have to alter or remove it for 10 years. There may be other adjustments that could be made in these circumstances though – such as providing a service by a reasonable alternative method.

In addition, a private club does not have to make changes to physical features where it meets in the house of a member or associate, although it will need to think about other adjustments (for example meeting in another, accessible, place).

## **Discrimination**

### **What does 'impossible or unreasonably difficult' mean?**

The phrase “impossible or unreasonably difficult” is used both as a 'trigger' for determining when adjustments relating to practices, policies and procedures have to be made, and also to determine whether or not a failure to make adjustments is unlawful.

A failure to comply with the duty to make reasonable adjustments in relation to providers of services to the public and private clubs will only amount to unlawful discrimination in specified circumstances. These circumstances are that the effect of the failure is to make it impossible or "unreasonably difficult" for the disabled person to make use of services or of clubs and that the failure is not justified.

In the case of public authorities carrying out functions, there are two types of functions:

- those which are like services, conferring a benefit
- those which are 'negative' in impact regardless of who is subjected to them (for example, the police arresting someone).

In the case of a benefit, a failure to comply with the duty to make reasonable adjustments will amount to discrimination where a particular barrier makes it impossible or unreasonably difficult to receive the benefit. In the case of a 'negative' function, a failure will amount to discrimination where a particular barrier makes the impact of the function more severe than for non-disabled people (described in the Act as "unreasonably adverse").

The Act does not define what is meant by "unreasonably difficult", or "unreasonably adverse". However, the two phrases are intended to represent the same level of difficulty in accessing services or functions that disabled people may face. However, when considering whether services are unreasonably difficult for disabled people to use, or whether disabled people's experiences are unreasonably adverse, service providers should take account of whether the time, inconvenience, effort, discomfort, anxiety or loss of dignity entailed in using the service would be considered unreasonable by other people if they had to endure similar difficulties.

**For example:**

If you have a bank account, and your statements are sent to you in standard print when you cannot read it, this would make it impossible or at the very least unreasonably difficult for you to access that service. The bank should provide your statements in a format that you can access, which might be large print or braille depending upon individual need.

See ' Access to goods, facilities and services under the DDA', ' Public authority functions under the DDA' and 'Private clubs and the DDA' about other duties under the Act.

## **What does taking 'reasonable' steps mean?**

The Act doesn't specify what factors should be taken into account when considering whether or not a step is a "reasonable" one to take. The Code of Practice states that what is reasonable will vary according to:

- the type of service being provided
- the nature of the service provider and its size and resources
- how the person's disability affects them in that context.

It also says that some of the following factors might be taken into account when considering what is reasonable:

- how effective any steps would be in overcoming the difficulty that disabled people face in accessing the services
- how practicable it would be for the service provider to take these steps
- how disruptive taking the steps would be
- the financial and other costs of making the adjustment
- the extent of the service provider's financial and other resources
- the amount of any resources already spent on making adjustments
- the availability of financial or other assistance.

### **For example:**

- A restaurant changes its menus daily. For that reason, it considers it not practicable to provide menus in alternative formats, such as braille. However, staff spend a little time reading out the menu for blind customers and the restaurant ensures that there is a large print copy available. These are likely to be reasonable steps for the restaurant to have to take.
- A utility company supplying gas and electricity to domestic customers sends out quarterly bills. On request, the company is willing to provide the bills in alternative formats such as braille or large print for customers with visual impairments. This is likely to be a reasonable step for the utility company to have to take.

### **Information in my preferred format**

Service providers, public authorities and private clubs have to make sure that the service is accessible to you without unreasonable difficulty. This may mean providing information in your preferred format but it will depend on the circumstances. For example, in the restaurant example above, it is unlikely to be held to be reasonable for the restaurant to have to provide menus in people's preferred format.

## **Will these adjustments cost me more?**

Disabled people cannot be charged more than others who are not disabled, or who have a different disability, to cover the cost of meeting their DDA obligations.

## **Can service providers wait until I approach them about their duties or do they have to do anything in advance?**

The duties owed under this section of the DDA are owed to disabled people as a whole, and service providers should have already reviewed their practices etc to make sure that they can comply with the Act. In certain circumstances, though, such as in the example of the utility company above, it may be reasonable for them to provide adjustments once you have requested them and not in advance.

## **Is there anything that I should do?**

Although service providers have obligations to think ahead about what disabled people may need to enable them to use their service, it is a good idea for you to let them know if you have any particular needs. If you need your bank statements in braille, or you need assistance in a supermarket, correspondence from the tax office in large print, or assistance to familiarise yourself with the premises of your private club, then let the service provider know of your needs to make sure that they are fully aware of what you require.

## **What if service providers don't comply with the Act?**

If you say that you have been discriminated against because a service provider has failed to make reasonable adjustments, service providers can defend such a claim if their reasons fall within the following grounds of justifications under the DDA applied. These grounds are:

- Health and safety: there is a reasonably held belief that the failure is necessary in order not to endanger the health and safety of any person.

- There is a reasonably held belief of an inability to give informed consent or to enter into an enforceable contract. This applies where a disabled person is clearly unable to understand a complicated transaction.
- In the case of a service provider only, making an adjustment would fundamentally alter the nature of the service, trade, profession or business.
- In the case of a public authority only, there is a reasonably held belief that not complying with the duty to make reasonable adjustments is necessary for the protection of the rights and freedoms of other people.
- In the case of a public authority only, the failure is a proportionate means of achieving a legitimate aim.
- In the case of a public authority only, where the authority has no power to take the steps which need to be taken.

## What can I do?

If a service provider hasn't made any reasonable adjustments and, as a result of this, it is impossible or unreasonably difficult for you to access the service (or unreasonably adverse in the case of a 'negative' public authority function), then you can take the matter further. In the first instance, you should write to the service provider detailing your complaint, and in particular why their failure to make adjustments makes it impossible or unreasonably difficult for you to use their service. You can use the RNIB 'DDA advocacy letter' to accompany this. If the service is a website, you can use the 'DDA website letter'. You can also issue them with the questions procedure, to find out more about their reasons for not making the adjustments.

## Getting advice about your rights

It is advisable to get further advice before taking your case up (see below). Ultimately, disabled people can take claims forward to county courts (sheriff courts in Scotland). In England, Wales and Northern Ireland most cases will be heard in the small claims court. Claims must be brought **within six months** of the act of discrimination.

If the case is proven, then the court can compensate for financial loss and / or hurt feelings, award a declaration of discrimination and make an order which requires the service provider not to discriminate (an injunction). The Equality and Human Rights Commission (EHRC) operates a conciliation service which may be able to mediate between a disabled person and the service provider.

## **RNIB**

RNIB Helpline (0845 766 9999 or 020 7388 2525 / [helpline@rnib.org.uk](mailto:helpline@rnib.org.uk)) can provide information, support and advice for anyone with a serious sight problem.

For further details and for all new enquiries about disability rights, please contact Sharon Hoyland (0207 391 2172 / [sharon.hoyland@rnib.org.uk](mailto:sharon.hoyland@rnib.org.uk))

For more complex DDA issues, please contact Liz Woskett-Burton (01733 375308 / [liz.woskettburton@rnib.org.uk](mailto:liz.woskettburton@rnib.org.uk)).

## **Equality and Human Rights Commission**

The Equality and Human Rights Commission deals with disability discrimination as well as discrimination on the grounds of race, gender, age, religion and sexual orientation, and provides advice and information on the Human Rights Act. Any references to the DRC should also be read as references to the EHRC after October 2007.

## **Other sources of support**

'Sources of information about the DDA' gives details of other organisations who can provide advice and support about the DDA, and 'What to do if you experience discrimination' offers suggestions for action you can take if you have been discriminated against.

## **About this guide**

This information is not an authoritative statement of the law. Whilst we have made every effort to ensure that the information we have provided is correct, we cannot accept any responsibility or liability.

Please also note that the information provides an outline of the provisions of the DDA but for the most up to date information, contact the DDA Legal Information Officer (DDAEnquiries@rnib.org.uk / 01733 375308).

This document is one of a set of information guides on the DDA for people with sight problems. If you would like this, or any other of RNIB's information on the DDA in large print, braille, on tape or CD, please contact Customer Services on 0845 702 3153 or 01733 37 53 50 / CServices@rnib.org.uk

## **RNIB and the DDA**

RNIB is committed to achieving comprehensive civil rights for all disabled people. The Disability Discrimination Act, although much improved, does not deliver all these rights. We will continue to campaign for additional legislation, such as a Single Equality Act, and attitudinal change within society to deliver this goal, as well as for the delivery of high quality services for all blind and partially sighted people.

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