

Factsheet 1 – The Disability Discrimination Act

Introduction

The Disability Discrimination Act 1995 (DDA) is civil rights legislation aimed at ending the discrimination that many disabled people face in society. This guide will focus on the areas most relevant to charities and voluntary organisations, Part 2 – Employment and occupation and Part 3 – Rights of Access: Goods, Facilities, Services and Premises, but the Act also puts duties on education and transport providers.

The Disability Rights Commission (DRC) has written and produced Codes of Practice that set out their understanding of the legal implications of the DDA. They are easy to read documents that explain the often complicated legal language in the Act. They also contain case studies and examples to illustrate important points. The two relating to employment and service provision are:

- Code of Practice – Employment and Occupation
- Code of Practice – Rights of Access: Goods, Facilities, Services and Premises

They can both be downloaded from the EHRC website www.equalityhumanrights.com

Definitions of disability

The definition of a disabled person under the Act is 'someone who has a physical or mental impairment which has a substantial and long-term effect on his or her ability to carry out normal day-to-day activities'. This definition means that there are over 11 million disabled people in Great Britain with a wide range of impairments.

Part 2 – Employment and occupation

Part 2 of the DDA relates to employment. As an employer you have a duty not to discriminate against disabled people and to make adjustments to assist your disabled employees or applicants for employment. This may involve changing the physical features of a building, for example widening a doorway, or providing auxiliary aids, for example an induction loop.

There is no general or anticipatory duty to make provision for disabled people under Part 2, but it is good practice to think about access issues when, for example, undertaking refurbishment work or when moving to new premises – you may employ a disabled person in the future or one of your existing employees may become disabled.

Discrimination under Part 2

It is against the law for you to discriminate against prospective employees:

- in the way that jobs are advertised
- in the way that you decide who gets the job, for example in the way that interviews are carried out or the way applications are handled
- in the terms that a job is offered, for example by only offering a temporary contract
- by refusing to offer a job

It is also against the law for you to discriminate against your disabled employees:

- in their terms and conditions of employment
- in chances for promotion, transfer, training or other benefits
- by dismissing them unfairly
- by treating them less fairly than other workers
- by treating them unfairly after their employment has ended, for example by not providing a reference
- by failing to make reasonable adjustments to policies, procedure and practices and to physical features

In addition, it is unlawful for you to subject disabled people to harassment, which is unwanted conduct relating to a person's impairment which:

- violates the disabled person's dignity
- creates an intimidating, hostile, degrading humiliating or offensive environment for the disabled person

As an employer, you may be able to defend a claim of disability-related discrimination by showing that your actions were justified. To do this you must have a 'material and substantial' reason for it – in other words, a good reason that is relevant.

An example of this may be a man who has severe back pain and is unable to bend down who is rejected for a job as a carpet fitter. This is a less favourable treatment, but the treatment can be justified because the man cannot carry out the essential requirement of the job which is to fit carpets.

Part 3 – Service provision

Part 3 of the DDA relates to service provision. If you are providing a service to members of the public you are likely to be classed as a service provider and will have a duty to ensure that you do not discriminate against disabled people. This involves making reasonable adjustments to policies, procedures and practices, providing auxiliary aids and services and making adjustments to physical features. This is a general anticipatory duty owed to all disabled people. The duties on service providers were introduced in three stages:

- 1 since 2 December 1996 it has been unlawful for service providers to treat disabled people less favourable for a reason relating to their disability
- 2 since 1 October 1999 service providers have had to provide auxiliary aids and services and make reasonable adjustments (changes) to policies, procedures and practices

3 since 1 October 2004 service providers have had to make reasonable adjustments (changes) to physical features

The duty to make reasonable adjustments affects all service providers, whether the service is provided free or paid for and regardless of the size of the organisation.

Physical features will include steps, stairways, exterior surfaces, doors, gates, toilets, lighting, furniture, signs and so on. Policies, procedures and practices will include, for example, allowing assistance dogs in a restaurant or formulating a fire evacuation strategy for disabled people. Auxiliary aids may include, for example, providing information on audiotape, providing a portable ramp or training a member of staff in the use of British Sign Language (BSL).

It is recommended that you first consider whether any physical features that create a barrier for disabled people can be removed or changed; if this is not possible, then you should consider a way of avoiding the physical feature; and if this is not possible either, then you should provide a reasonable alternative of making the service available to disabled people.

Note that the duty to make reasonable adjustments does not only apply to the built environment – a service provided via a website or over the telephone also needs to address access issues.

Discrimination under Part 3

It is against the law for service providers to:

- refuse to provide services to disabled people
- provide a lower standard of service to disabled people than to other members of the public
- provide services to disabled people on worse terms than to other members of the public
- fail to make reasonable adjustments, including reasonable adjustments to physical features

However, there are circumstances when a service provider may be able to justify discrimination:

- if the treatment was necessary in order to not endanger the health and safety of anyone, including the disabled person
- if the disabled person is not able to enter into an enforceable agreement or of giving informed consent
- if the refusal to provide a service to the disabled person was necessary because the service provider would otherwise not be able to provide the service to other members of the public
- if the inferior service provided was necessary in order to provide the service to that person or other members of the public
- if the disabled person was charged more than other people because of the greater cost in providing the service to the disabled person. This does not apply

to reasonable adjustments to physical features.

- if a service provider can show that it would not have been reasonable to make an adjustment to a physical feature

Reasonable adjustments in practice

There is no definitive answer to exactly what a reasonable adjustment is. The Act uses this phrase to give some flexibility and allow different solutions in different situations. The Code of Practice – *Rights of Access: Goods Facilities, Services and Premises* advises that what is reasonable may vary depending on:

- the type of services provided
- the kind of service provider and its size and resources
- the effect of the disability on the individual disabled person
- how effective the adjustment is in overcoming the difficulty that disabled people face
- how practicable it is for the service provider to take the steps
- the costs involved in making the adjustment
- the amount of disruption caused by the adjustment
- money already spent on making adjustments
- the availability of financial or other resources

The duty to make reasonable adjustments falls into three main areas:

1 Changing practices, policies and procedures

You may have a practice that, perhaps unintentionally, makes it impossible or unreasonably difficult for disabled people to access the service or employment. In such cases, you have to take reasonable steps to change the policy so that it no longer has that effect. This may simply mean instructing staff to not enforce a practice or amend a policy to allow exceptions. The Code of Practice gives the example of a restaurant with a collar and tie policy allowing a man with a severe skin complaint in without a tie.

2 Providing auxiliary aids and services

You have to take reasonable steps to provide auxiliary aids or services to disabled people. Examples of auxiliary aids could be the provision of information on audio tape and the provision of a BSL interpreter.

3 Overcoming a physical barrier by:

- removing the feature
- altering it
- avoiding it
- providing the service by a reasonable alternative means

The Act does not require you to choose one way of overcoming a physical barrier. For example, you may decide to provide a service by an alternative means. If the result is that disabled people can then access the service, it will satisfy the DDA. But if it is still unreasonably difficult to access the service, you will have to show

that you could not have reasonably removed, altered or avoided the barrier to access.

However, it is in the interest of both service providers and disabled people that barriers to access are removed. The DRC recommends that the options of removing or altering a physical feature should be considered first in order to adopt an inclusive approach to adjustments. This will result in the services available to everyone in the same way.

Reasonable adjustments and access audits

The Code of Practice says that 'service providers are more likely to be able to comply with their duty to make adjustments in relation to physical features if they arrange for an access audit of their premises to be conducted, draw up an access plan or strategy and act on the results.' When carrying out an audit, the Code of Practice recommends that you should seek the views of people with different impairments, or those representing them, to assist in identifying physical barriers and developing solutions.

The National Register of Access Consultants is the UK-wide accreditation body for access professionals. To contract an access auditor or consultant, visit the website www.nrac.org.uk

For more information about access audits, refer to the Access Audits factsheet.

Further guidance

Equality and Human Rights Commission
Freepost RRLG-GHUX-CTR
Arndale House
Arndale Centre
Manchester
M4 3EQ

Tel: 0845 604 6610

Textphone: 0845 604 6620

Fax: 0845 604 6630

Email: info@equalityhumanrights.com

Website: www.equalityhumanrights.com

National Register of Access Consultants
70 South Lambeth Road
London SW8 1RL

Tel: 020 7735 7845

Fax: 020 7840 5811

Email: info@nrac.org.uk

Website: www.nrac.org.uk