

# **DISABILITY DISCRIMINATION ACT – FAQs**

## **1 What is this guidance for?**

1.1 To explain the new and existing duties on businesses and organisations ("service providers") under Part III of the Disability Discrimination Act, especially as they affect small and medium-sized enterprises. Unlike the employment provisions of the Act (Part II), there are no exemptions for service providers on the basis of their size.

## **What is the Disability Discrimination Act?**

1.2 The Disability Discrimination Act 1995 introduced new laws aimed at ending the discrimination that many disabled people face. The Act gave disabled people new rights of access to goods, facilities and services, as well as in employment and buying or renting property.

## **When does Part III of the Act come into force?**

1.3 Since December 1996 it has been unlawful for service providers to treat disabled people less favourably than other people for a reason related to their disability.

- From 1 October 1999 service providers have to make reasonable adjustments for disabled people, such as providing extra help or making changes to the way they provide their services.
- From 2004 service providers will also have to consider making reasonable adjustments to the physical features of their premises to overcome physical barriers to access.

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

1.4 The Act protects the rights of a wide range of people with sensory, mental or physical disabilities. This includes people who use wheelchairs, blind and partially sighted people, deaf people, people with arthritis, people with long-term illnesses and people with learning disabilities. The Act also covers people with severe disfigurements and, in certain circumstances, people who have had a disability in the past - for example, someone who had severe depression, but has since recovered.

## **Does the Act exempt any service providers from its provisions?**

1.5 Part III of the Act does exclude education and the use of any means of transport from its provisions. It also excludes services not available to the public, such as those provided by private clubs to their members. Manufacturers and designers of goods are also excluded, unless they provide a service direct to the public.

## **So what kinds of businesses is this leaflet written to help?**

1.6 Some typical examples would be shops, restaurants, cafes, hairdressers, dry cleaners, opticians, high street solicitors, independent cinemas and

garages - though, of course, this is by no means a complete list. You should also bear in mind that, as well as your main business, the Act covers any subsidiary services you may provide, such as toilets, car parking and information. More information is contained in a Code of Practice. Details of the Code, which explains the duties under Part III, can be found on page 16 of this booklet.

## **2 When does discrimination occur?**

2.1 As a service provider, you might discriminate against a disabled person in two ways:

- by treating him or her less favourably than other customers because of their disability; or
- by not making reasonable adjustments to the way you deliver your services, so that disabled people can use them.

## **3 What does "less favourable treatment" mean?**

3.1 There are three ways in which you might treat a disabled person less favourably than you treat other customers:

- by refusing to serve him or her;
- by providing him or her with a lower standard of service;
- by providing him or her with a service on worse terms.

## **Does a disabled person have to show that other people were actually treated better than they were?**

3.2 No. If others would have been treated better, that is considered to be less favourable treatment.

## **Does it make a difference why the disabled person is treated less favourably?**

3.3 Yes, there must be a connection between their disability and the less favourable treatment they receive.

## **Surely I have the right to refuse to serve someone?**

3.4 Yes, but you cannot, because of a person's disability, refuse to provide them with a service which you are offering to other people.

For example:

A publican refuses to serve a disabled person whom he knows has epilepsy. She is the only customer in the pub who is refused service. In the absence of a reasonable explanation - such as that she had no money - a court is likely to decide that there has been discrimination.

For example:

A small football club refuses entry to a visiting supporter because he has cerebral palsy and has difficulty co-ordinating and controlling his movements. No other visiting supporter is refused entry. The only reason for the refusal is the person's disability. That is less favourable treatment.

For example:

A party of adults with learning disabilities has booked a restaurant for a special dinner. The staff spend the evening making fun of them and provide

worse service than usual. Even though there were no other diners in the restaurant at the time, the disabled people were treated less favourably than others would have been.

For example:

An assistant in a small shop refuses to serve a disabled person, telling them that a nearby larger shop can better meet their needs. While it is good practice to inform disabled people where they can find a service suited to their requirements, to refuse to serve them is likely to be unlawful.

For example:

A disco ejects a person with an artificial arm because he has drunk too much and has become abusive and disorderly. The disco would have ejected any other customer in similar circumstances. The ejection (or refusal to serve) is not for a reason related to the disabled person's disability and is unlikely to be unlawful.

## **4 Why do I need to make reasonable adjustments for disabled people?**

The service provider's duty to make reasonable adjustments is a cornerstone of the Disability Discrimination Act. You have to take positive steps to make your services accessible to disabled people.

### **How should I find out what reasonable adjustments I will need to make so that my service is accessible?**

Consider whether your services are accessible to disabled people. You should anticipate their needs and the adjustments that may have to be made for them, rather than wait until a disabled person wants to use a service you provide. You could also ask your customers whether they have any special requirements and what adjustments may need to be made. Once you have put a reasonable adjustment in place, make sure, when appropriate, that you draw the attention of disabled people to its existence.

### **Is the duty to make reasonable adjustments a one-off or an ongoing requirement?**

It is a continuing duty, not something that can be considered once only and then forgotten about. You should keep the duty to make reasonable adjustments under review. It might be appropriate for you to do this whenever you review the efficiency and cost efficiency of your business and your working practices.

### **What happens if I fail to make reasonable adjustments?**

You might be breaking the law. A disabled person can make a claim against a provider whose services are impossible or unreasonably difficult for him or her to access.

### **How can I judge when my services are unreasonably difficult for disabled people to use?**

4.5 You should consider whether the time, inconvenience, effort or discomfort involved for a disabled person to use your services would be considered unreasonable by other people if they experienced the same difficulties.

## **5 So what am I actually required to do?**

5.1 If it is impossible or unreasonably difficult for disabled people to use your services you may be required to:

- take reasonable steps to change your practices, policies or procedures; or
- provide a reasonable alternative method of making your services available to disabled people.

You may also have to take reasonable steps to provide an auxiliary aid or service to assist or enable disabled people to use your service.

5.2 You must consider taking reasonable steps to change your practices (what you do), policies (what you intend to do) or procedures (how you plan to go about it), if they make it impossible or unreasonably difficult for disabled people to use your services.

5.3 You must take reasonable steps to provide a reasonable alternative method for making your services available to disabled people, where a physical feature makes it impossible or unreasonably difficult for them to use these services.

5.4 You must take reasonable steps to provide an auxiliary aid or service if that would enable or make it easier for disabled people to use your services.

### **What are auxiliary aids and services?**

5.5 This will depend on the situation but it might be a piece of equipment or just extra assistance to disabled people from trained staff. Auxiliary aids and services should make it easier for disabled people to use your service.

### **How can I know what special aids I might need to provide?**

5.6 It is good practice to consult disabled customers about their needs. You could also talk to local or national disability groups, or trade associations. And find out what other firms have done in similar circumstances.

For example:

An independent cinema has a steep flight of stairs at its front entrance, making it impossible or unreasonably difficult for visitors with a mobility impairment to have access to the cinema. A side entrance for staff use only is fully accessible and always open. The cinema decides to allow disabled people to use this side entrance.

For example:

A video rental shop allows only people who can provide a driving licence as proof of their identity to become members. This automatically excludes some disabled people from joining because the nature of their disability prevents them from obtaining a driving licence. The shop would be required to take reasonable steps to change this practice. It does so by being prepared to accept alternative forms of identification from its customers.

For example:

A shop has a policy of not allowing dogs on its premises. This policy makes it unreasonably difficult for disabled people accompanied by a guide dog to use it. Since the shop has a duty 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 dog.

For example:

An estate agent provides a customer with dyslexia with details on tape of houses in the area he is looking to move to.

For example:

A person with ME who uses a wheelchair visits her local insurance broker. The reception desk is too high for her to lean on to fill out a form. So she is given a clipboard to rest the form on and is able to complete it.

For example:

A small petrol station decides that an assistant will on request help disabled people use the petrol pumps. It places a prominent notice at the pumps advertising this service and the hours it is available.

## **6 Do I have to make physical changes to my premises?**

At present, you do not have to remove or change physical features on your premises, or provide a reasonable means of avoiding the feature. These duties will be introduced in 2004. However, there is nothing in the Act to stop you making physical changes to your premises before then. For example, if you are planning building work or refurbishment you could include these physical changes at that time. From 1 October 1999, however, if a physical feature of your premises prevents a disabled person from using your services, then you must consider whether you can take steps to provide an alternative way of making the service available to disabled people (see 5.3 above).

### **Is making physical changes to our premises the only way to make my business's services more accessible to disabled people?**

6.2 No, you should not assume this. Simple measures, such as allowing more time to deal with a disabled customer, can help disabled people use a service. Often action such as disability awareness training for your staff is all that is needed. But this does not mean that in every case minor action will make the service accessible.

## **7 Will small service providers be expected to do as much as large ones?**

7.1 What is a reasonable step for you is likely to depend on the type of services you are providing, your size and resources, and also what effect the disability has on the individual disabled person. The following factors might be taken into account in deciding whether the steps you had taken were reasonable:

- Would they overcome the difficulty that disabled people face in accessing your services?
- How practicable is it for you to take these steps?
- How much would it cost you?
- How much disruption would it cause you?
- What are your financial and other resources?

- How much have you already spent on making adjustments?
- What financial and other assistance is available to you?

## **So will I have to completely change the way I run my business?**

No, but you may have to make some adjustments. If you have a way of doing things that even unintentionally makes it impossible or unreasonably difficult for disabled people to use your services, then you must take reasonable steps to change, instructing your staff where appropriate.

## **Why can't I just deal with any problems as and when they arise?**

Because the Act requires you to plan ahead to meet the requirements of your disabled customers.

## **I am expected to make adjustments, which will probably cost me money. What is in it for me?**

7.4 There are over 8.5 million disabled people in the United Kingdom and they have considerable collective spending power. Any adjustments you make for disabled people may also benefit other customers and your staff. You will also retain the goodwill of disabled people and their families and friends - one in four customers is disabled or close to someone who is. And you will avoid the risk of legal action against you.

## **Surely then I can charge disabled customers extra to recover the costs of any adjustments I have had to make to my business?**

7.5 No. Reasonable adjustments are part of your general expenses of providing the service, and this cost cannot be passed on to disabled customers alone. Nor can you charge them more than others for the same thing, as a way of deterring disabled people from using your service. You are, of course, not required to do anything that would involve unreasonable expenditure. Only if your service is tailored to the individual disabled customer and meeting their requirement involves an additional cost for you, may you be able to justify charging them more than others.

For example:

Customers in a busy sub-post office are required to stand in a queue to be served. A disabled customer with severe arthritis wishes to purchase a TV licence, but he experiences great pain if he has to stand in line for more than a couple of minutes. Since other customers would not have to undergo similar discomfort to buy a TV licence, the queuing policy may need to be adjusted. It might be reasonable to ask this customer to take a seat and then serve him as if he had queued, or provide a separate service desk with seating for disabled customers. It would probably be considered unreasonable, however, to expect the post office to send a member of its small staff to the disabled customer's home to sell him the TV licence.

For example:

A furniture shop charges more for an orthopaedic bed, made to the disabled customer's specification, than it does for a standard bed. This is likely to be justified.

For example:

A guest house installs an audio-visual alarm in one of its guest bedrooms to accommodate visitors with sensory impairments. To recover the costs of this installation, the landlady charges disabled guests a higher daily charge for that room, although it is otherwise identical to other bedrooms. This is unlikely to be justified.

## **8 Can I justify treating disabled people less favourably or failing to make reasonable adjustments for them?**

You should not be looking for reasons to discriminate against disabled people who wish to use your services. But there are several possible reasons that might justify less favourable treatment. These are listed below, but they cannot be used as an excuse to exclude all disabled people from using your services.

### **Health and safety considerations**

8.2 The Act does not require you to do anything that would endanger the health and safety of any person, including the disabled person in question. But you should not use safety requirements as an excuse for discrimination based on stereotyping or generalised assumptions about disabled people. Where appropriate, ask the person about their disability before making a decision.

### **Inability to enter into contract**

8.3 You do not have to enter into a contract with a disabled person who is unable to understand the nature of the agreement or give an informed consent. This does not, however, apply where another person is legally acting on behalf of the disabled person. And without clear evidence to the contrary you should assume that a disabled person is able to enter into a contract.

### **Where it would stop you providing your service at all**

8.4 You can justify not providing a service to a disabled customer if you would otherwise be unable to provide the service to other customers. But other customers would have to be prevented from using the service at all, not simply be inconvenienced or delayed.

### **To enable you to provide the service**

8.5 You can justify providing an inferior service to the disabled person if this is necessary for you to be able to provide the service to the disabled person or other members of the public.

### **Greater cost**

8.6 You can only justify charging a disabled person more for a service that is individually tailored to the requirements of a disabled customer, if a higher charge reflects the additional cost of meeting the disabled person's specification.

### **Protecting the fundamental nature of a business or service**

8.7 You do not have to make any adjustments that would fundamentally alter the nature of your service, profession or business.

For example:

An independent tour guide refuses to allow a person with a severe mobility impairment on a tour of old city walls because he has well-founded reasons to believe that the extra help the guide would have to give her would prevent the party from completing the tour. This is likely to be justified.

For example:

A jeweller refuses to sell a pair of earrings to a person with a learning disability, claiming that the customer does not understand the nature of the transaction. This is even though her order is clear and she is able to pay for the earrings. This is unlikely to be justified.

For example:

Although there are adequate means of escape, a local independent cinema manager turns away a wheelchair user because she assumes, without checking, that he could be in danger in the event of fire. This is unlikely to be justified.

For example:

A night club with low level lighting is not required to adjust the lighting to accommodate customers who are partially sighted, if this would fundamentally change the atmosphere or ambience of the club.

For example:

A shoe shop charges more for a pair of shoes that have been adjusted to the specification of a person with a mobility impairment, than it does for a standard pair in the same design. This is likely to be justified.

For example:

A guest house restricts a wheelchair user's choice of bedrooms to those with level access to the lifts. These rooms tend to be noisier and have restricted views. The disabled person would otherwise be unable to use the hotel. The restriction is necessary in order to provide the service to the disabled guest. This is likely to be justified.

## **9 What happens if there is a dispute under the Disability Discrimination Act?**

A person who believes that a service provider has discriminated against him or her may bring civil proceedings. Court action must be brought within six months of the alleged discrimination. If successful, a disabled person could be awarded compensation for any financial loss, including injury to feelings.

### **Could I be liable for the actions of my employees?**

9.2 Yes. The Act says that employers are responsible for anything done by their employees in the course of their employment, even if the act took place without their knowledge or approval, unless the employer can prove that they took reasonable steps to prevent the employee from doing the act in question.

### **Is there an alternative to legal proceedings?**

9.3 The disabled person might decide first to raise a complaint with the service provider to see whether the issue can be resolved by negotiation to the satisfaction of both parties.

## **10 Isn't there a danger of patronising disabled people?**

10.1 It is always important to ensure that the dignity of a disabled person is respected. For example, making separate or segregated provision for them might amount to less favourable treatment rather than equal treatment.

### **How should we avoid this?**

10.2 Disabled people are entitled to be consulted about how they might be served. You should avoid making unfounded assumptions about what is best for them. Disabled people are entitled to make the same choices and to take the same risks within the same limits as other people.

## **11 Checklist of Good Practice**

Listed below are some steps you can take, to ensure that you comply with the spirit of the Disability Discrimination Act, as well as meet your legal obligations.

- Think and plan ahead to meet the requirements of your disabled customers.
- Don't make assumptions about disabled people based on speculation or stereotypes. Think about the wide range of disabilities that there are when planning adjustments.
- If in doubt, ask disabled people themselves how they can best be served. Listen carefully and respond to what they really want. You could also consult with disabled staff and disability organisations.
- Think about the way you treat disabled customers. Let them know how to request assistance, and have a customer complaints procedure that is easy for them to use.
- Ensure that you respect the dignity of a disabled person when providing them with your services.
- Establish a positive policy on providing services to ensure it includes disabled people. Communicate this policy to your staff and monitor its effectiveness.
- Consider putting in place positive practices which will encourage disabled people and others to use your services.
- Make sure your staff training includes your policy towards disabled people and their legal rights, and disability awareness and disability etiquette training.
- Regularly review whether your services are accessible to disabled people.
- Don't wait until 2004 to remove any physical features of your buildings that create a barrier to access for disabled people. Consider doing this at the same time as any building or refurbishment work you are planning, which could help reduce costs and disruption.

Some smaller businesses may find some of these steps more important than others in making their smaller-scale services accessible to disabled people. However, adopting best practice can only help to ensure that you comply with the Act.

### **For further information**

## **Code of Practice**

### [Disability Discrimination Act 1995: Code of Practice; Rights of Access to Goods, Facilities, Services and Premises](#)

(The Code gives practical guidance on how to prevent discrimination against disabled people in accessing services. It describes the duties of service providers and others, helps disabled people understand the law, and seeks to encourage good practice.)

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Telephone orders/general enquiries: 0870 600 5522

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It is also available in alternative formats or via the Internet (<http://www.disability.gov.uk>)

Northern Ireland

A similar but separate Code applies to Northern Ireland.

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It is also available in alternative formats or via the Internet (<http://www.dhssni.gov.uk/>)

DDA Helpline

Free information about the Act and the Code of Practice, and other Provisions of the Act including those relating to employment, can be obtained by contacting the DDA Helpline:

Telephone: 0345 622 633

Faxback service: 0345 622 611

Text phone: 0345 622 644

## **Related Links**

- [Overview of the Disability Discrimination Act.](#)
- [Disability Discrimination Act 1995: Code of Practice; Rights of Access to Goods, Facilities, Services and Premises.](#)
- [The Stationery Office](#) .

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