

The Disability Discrimination Act (DDA)



Use **Guide 5** to gain an understanding of how best to meet the duties of museums, archives and libraries under the Disability Discrimination Act.

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Registered Charity No. 1079666
ISBN 1-903743-18-4
Designed by Satpaul Bhamra

A CIP catalogue record of this publication is available from the British Library.

Front cover:

Audio, large-print books and recorded information are examples of auxiliary aids under the DDA.

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Introduction

Most parts of the Disability Discrimination Act (DDA, 1995) came into force in 1996 and 1999, and yet the DDA remains little known and has become the subject of misconceptions. In October 2004 those parts of the DDA relating to the physical environment will come into force, and this prospect still raises unjustified fears about what service providers need to do to meet their legal duties.

Since the DDA has been in existence, many museums, archives and libraries have been improving access for disabled people on levels not seen before, and often in very creative ways. Without the DDA, many organisations would not have felt an incentive to explore innovative access solutions, such as providing videos in sign language for deaf people. The DDA has also proved to be an incentive for socially inclusive architecture, concentrating minds on elegant design solutions for ramps and lifts. However, there is still much museums, archives and libraries can and need to do to demonstrate that they embrace the spirit of the DDA.

This Guide shows how museums, archives and libraries can place the DDA at the heart of their planning and successfully improve access for disabled people. It highlights the most significant aspects of the DDA and gives practical guidance, illustrated with many examples, on how best to meet their obligations under the DDA.



In addition to physical spaces, the DDA covers furniture and fittings – and this includes exhibits and learning centres. Photo: The Potteries Museum and Art Gallery, Stoke-on-Trent

1 The DDA at a glance

The DDA applies to all museums, archives and libraries which provide a service to the public. It applies to all employers with 15 or more employees, whether they are a local authority or an independent organisation. From October 2004, it will apply to all employers. In 2002, the service provisions of the DDA were extended to further and higher education (Special Educational Needs and Disabilities Act, SENDA) and this includes library services for students. SENDA is being implemented in stages, with its final provisions due to be implemented in 2005.

The spirit of the DDA

The DDA aims to remove discriminatory barriers to employment, services and premises for disabled people. It establishes a right of access to goods, services, facilities and premises. It makes it unlawful to treat disabled people less favourably on grounds of disability. To achieve this aim, it places a set of duties on employers and service providers, including the duty to make 'reasonable adjustments' (see Appendix 1).

The duties of the DDA are constantly evolving. As employers and service providers start to implement their duties under the DDA, they frequently develop best practice.

Managing the DDA

The DDA places a pro-active duty – called 'anticipatory duty' – on service providers to know what the requirements of disabled people are, so they know what reasonable adjustments they can introduce. A Disability Action Plan counts as evidence that this duty has been met (see page 11).

Service providers need to review policies, practices and procedures which make it unreasonably difficult for disabled people to use their services equally. For example a stock acquisition or exhibitions policy which makes no reference to disabled people can lead to disabled people being treated less favourably.

Making services accessible

The DDA makes it unlawful to refuse a service to a disabled person on the grounds of disability, or to provide it on different terms or to a lower standard (see page 15).

Service providers must make reasonable adjustments and provide 'auxiliary aids and services' to make services more accessible. Examples range from providing physical assistance to supplying an audio guide for people with learning difficulties.

Equal opportunities in employment

The duty to make reasonable adjustments applies to all aspects of employment, including the workplace, recruitment, promotion, training and retention. Providing a sign language interpreter at job interview is one example of a reasonable adjustment (see page 18).

Access to premises

Service providers already have to provide an 'alternative method' for making a service accessible, where physical barriers prevent access to it. From October 2004, service providers may have to make changes to buildings and grounds to make services accessible. An online archive collection which meets web-accessibility standards is an example of an alternative method (see page 22).

Definition of disability

The definition of disability adopted for the purposes of the DDA (see Appendix 2) includes people with HIV who are symptomatic (this is very relevant for equal opportunities in employment). It includes people with severe facial disfigurements, who can face prejudice both in service provision and employment.

Under the employment provisions of the Act, people who have been but are no longer disabled are included. This may be particularly relevant to people who may be discriminated against because of a history of mental health needs.

Relationship to other legislation and policies

Historic Buildings and Health and Safety Regulations override the DDA (where there is no discretion available in legislation). However, they cannot be used as an excuse for inaction.

E-government policies require that public websites are accessible to disabled people by 2005 (see Guide 7).

The way the DDA works

From complaint to court

A disabled person who feels discriminated against under the DDA can take advice from various sources such as the Citizen's Advice Bureau or the Disability Rights Commission. If it is established that the person is indeed disabled under the definition of the DDA (see Appendix 2) and that discrimination is very likely to have occurred, the complainant may want to initiate a conciliation procedure or take out a legal case. About as many cases are successfully resolved through the conciliation procedure as are taken to court (service cases) or tribunals (employment cases).

Examples of cases

The largest number of DDA cases has been brought to Employment Tribunals under the employment provisions of the DDA. This represents some 9,000 cases between December 1996 and September 2000. The compensation recovered by disabled complainants has ranged from £1,200 to £280,000, with the average at £13,046 in 2000.

Most cases in the leisure and cultural sector relate to refusal of service; for example a hotel, restaurant or pub refuses to serve a person with a learning difficulty, with a facial disfigurement or a visually impaired person who uses a guide dog. An attraction lost a case brought against them by charging an individual for the use of a wheelchair, as this meant that it had provided a service on different terms. County Courts can award up to £50,000 compensation for service cases.

The Disability Rights Commission

The Disability Rights Commission (DRC) was established in 2000 and given powers to enforce the DDA. In 2003, the DRC has for the first time instigated a formal investigation. It has commissioned an audit of 1,000 randomly selected websites by City University, to assess how accessible websites currently are for disabled people (findings will be made public early in 2004). Disability organisations estimate that at most one third of websites are accessible to disabled people (see Guide 7 for guidance on web-accessibility).

The Board of the DRC includes representation from employers, service providers, as well as disability organisations. The DRC provides advice to employers, service providers and disabled people.

2 Managing the DDA

The anticipatory duty

The DDA places a pro-active duty – called ‘anticipatory duty’ – on service providers to know what barriers disabled people may face. It is understood that no one will ever be required to know everything about every individual’s needs and wants, but there is much they can do to research what barriers disabled users and non-users face and solutions for removing them. Through consultation one really gets to know users (see Guide 11).

Instead, the DDA Codes of Practice (see Further information) cites examples of what might be taken as evidence for meeting this duty:

- disability Policy;
- a disability action plan;
- access audits;
- staff training;
- consultation with disabled people.

The anticipatory duty can be met through a planned approach to improvements. Recommendations contained in access audits create a route for positive change, through a prioritised and timed action plan (see Guide 4).

Disability training can be very effective, as it raises awareness, dissolves fears and paves the way to informed policies and plans (see Guide 3). A Disability Policy and Plan could be as short as one page for a small organisation, but cross-refer to a range of policies and plans in a large organisation.

Wise planning

Resource's survey on access for disabled people in museums, archives and libraries in 2001 shows clearly that high performance in access for disabled people results from a planned approach. Organisations identified as 'high performers' (those who scored 85 or more out of a total of 125 indicators) are more than twice as likely to have a formal access plan for disabled people. Nine out of ten high performers have carried out an access audit compared with less than a third of low performers. Nine out of ten high performers have also received disability training, compared with less than a fifth of the low performing group.

There is much room for many organisations to strengthen their commitment to a planned approach. Resource's survey, based on a sample of 430 museums, archives and libraries, provided the following findings:

- 86 per cent had equal opportunities policies which mention disabled people.
- 27 per cent had a disability action plan.
- 67 per cent had undertaken audits, of which 31 per cent had implemented all or part of the recommendations.
- 54 per cent had provided staff training.
- 56 per cent included expenditure for disability access in core budgets.

Review of policies, practices and procedures

Service providers have a duty under the DDA to amend policies, practices and procedures which make it impossible or unreasonably difficult for disabled people to use their services.

Policies, practices and procedures either stimulate a culture of ongoing improvements or they inhibit progress. Sizeable barriers in museums, archives and libraries can arise simply because provision for disabled people is not included in key policies, and improvements are possible in a number of areas. The following are some examples:

- Budgeting for disability access in core budgets, as well as budgets for exhibitions, stock acquisition, events, publications and refurbishments.
- Developing a house-style policy or an information policy which is inclusive of the requirements of disabled people (see Guide 6, section 1).
- Including disability awareness or equality training in the induction and staff training programmes for all staff. Managers, directors and board members do have a duty to ensure that staff are aware of their responsibilities under the DDA and could be held legally responsible for staff acting in breach of it.
- Specifying that contractors will be expected to demonstrate commitment to access for disabled people.

To develop a culture which is inclusive of disabled people it will be necessary to initiate some new practices and procedures. For example, it is easy to include a request for information about access requirements in every booking form for public events and meetings. This will allow organisers to plan ahead, for example,

to produce information in braille, if a delegate requires this. Conference venues should also be accessible and this could be made a matter of policy. The venue should also have an accessible speakers' platform – we must not assume that disabled people only exist as audience members.

3 Making services accessible

Unlawful behaviour

It is unlawful for a service provider to undertake the following actions (unless they can justify their actions under one of the limited grounds in the Act):

- **Refusal to serve someone for a reason related to their disability**
For example, the coffee shop in a library refuses entry to a person with a facial disfigurement because they feel it may offend other users. This is likely to be illegal under the Act.

- **Offer a service on different terms**
For example:
 - A museum charges deaf people for using the introductory video with sign language, whereas there is no charge for printed visitor and exhibition information. This is likely to be illegal.

 - An archive asks a person with a learning difficulty to come only at specified times during public opening hours. This is likely to be illegal. However, the archive is entitled under the Act to provide an enhanced level of service on appointment or to programme specific activities for groups of disabled people.

 - A venue offers concessions to wheelchair users who require an escort, but not to visually impaired people who require one. This may represent discrimination against one specific group of users and is likely to be illegal.

- **Provide a service of a different standard or manner to disabled people**
For example, under a postal library lending scheme, a visually impaired person can only borrow one book at a time, whereas there

are no such restrictions for other users of the service. This is likely to be illegal under the Act.

The DDA does not require every item of a collection to be made accessible. Instead it places duties on service providers to make reasonable adjustments to make services more accessible.

Justifications for a difference in service

Refusal of service, service on different terms or of a different standard can be justified on the following term.

- **Service providers are not required to make any changes that would alter the service fundamentally.**

For example, during a group guided tour, a person considerably slows down the pace, repeatedly asking for extensive descriptions.

However, a service provider may develop an inclusive tour for all, using plain English and story telling, or inviting participants to touch exhibits.

Auxiliary aids and services

Service providers have a duty to make reasonable adjustments and, specifically, to provide 'auxiliary aids and services' which make a service more accessible to a disabled person. The most widely and cheaply available auxiliary aid or service is a member of staff who provides assistance to a user or visitor e.g. with reading or guiding.

There are many auxiliary aids and services for managers to get to know. Section 1 of Guide 6 uses inclusive information as an example and provides guidance on how to develop a priority plan.

Examples of auxiliary aids and services

A bold felt pen, large letters and a note pad

Accessible websites

Assistance to read the catalogue

Assistive technology or learning software

Audio version for text and verbal communication

Audio visual alarms

Closed Circuit Television to magnify text and image

Deafblind alphabet, using finger spelling

Descriptions of objects, exhibitions, slides

Face to face communication using clear communication strategies

Facilitators for deafblind people

Guided tours and inclusive events for specific disability groups

Inclusive audio guides, audio guides for people with learning difficulties, for visually impaired people

Induction loops

Information and books in large print, braille, audio, Moon

Information panels with short easy-to-understand hierarchised text

Library inter-lending and home delivery services

Multi-sensory events

PCs with adjustable font size and background colour

Radio systems with inductive couplers (tours in noisy environments)

Sign language interpreters

Sign supported English

Touch facilities, tactile maps and three dimensional models

Textphones, telephone amplifiers and inductive couplers

Use of email

Use of Plain English

Use of symbol systems

Using a 'Type talk' communication service

Videos in British Sign Language

4 Equal opportunities in employment

Duties of employers

The DDA places a duty on employers to make reasonable adjustments if their employment arrangements or premises place disabled people at a substantial disadvantage. The Act does not prevent employers from treating disabled people more favourably than non-disabled people.

The DDA covers almost all aspects of employment, including the work place, recruitment (including publicising a vacancy and job interviews), training, promotion, transfer, retention, benefits, harassment and dismissal.

Definition of discrimination

Under the Act, an employer discriminates against a disabled person if:

- the person is treated less favourably than a non-disabled person for a reason that relates to their disability;
- the employer cannot show that the treatment is justified.

For example:

- An employee who uses a wheelchair is not promoted solely because the work station for the higher post is inaccessible to wheelchair users. The refusal of promotion could not be justified.
- An employer does not shortlist a blind applicant, because he/she thinks that blind people cannot use computers. The employer's assumption is wrong and less favourable treatment could not be justified.

- A blind person applies for a job which involves a significant amount of driving. If it is not reasonable for the employer to adjust the job so that the driving duties are given to someone else, the non-appointment could be justified.

However, employers will need to ensure that their job descriptions are accurate and that the requirements are necessary to perform the job.

Under the Act, an employer discriminates against disabled people if:

- the employer does not comply with the duty of reasonable adjustment;
- he/she cannot justify this failure.

Reasonable adjustments

Reasonable adjustments are a response to the specific requirements of an individual. Examples include:

- Providing a sign language interpreter at job interview to a deaf job applicant.
- Modifying procedures for testing or assessment.
- Making adjustments to premises.
- Assigning the person to an accessible work place within the premises.
- Allocating some of the disabled person's duties to another person.
- Allowing the person to be absent during working hours for rehabilitation, assessment or treatment.
- Providing a reader or interpreter.
- Providing training or a mentor.

For example:

- An employer alters a disabled employee's working hours, so that he/she can drive to work outside rush hour, which is less stressful.
- An employer contacts the local Employment Service's Assessment Team (PACT) immediately after offering a post to a disabled person, to make sure that the new employee's equipment and support needs are being met from the outset. PACT can cover the cost of a range of adjustments.

The cost of reasonable adjustments

Making reasonable adjustments is not as expensive as had been anticipated in the early years of the DDA. The Department for Work and Pensions published the report *Costs and Benefits to Service Providers making Reasonable Adjustments under Part III of the DDA* in 2002 (see Further information). The findings, based on 1,000 telephone interviews with service providers, show that:

- Some 40 per cent of service providers report having made adjustments (63 per cent in the public sector).
- Cost was hardly ever cited as a reason for not making an adjustment.
- More than half of the service providers had found it very easy or fairly easy to make the adjustment.
- For most kinds of adjustment the initial cost lay between £100 and £1,000.
- Ongoing costs for most adjustments were below £100.

The benefits cited include more accessible service, increased customer satisfaction, increased numbers of disabled customers, improvements to the external image, higher staff morale and benefits for customers in general.

5 Access to premises

Duties of service providers

From October 2004, service providers may have to make changes to their buildings and grounds to make sure that disabled people can use their services. If a physical feature makes it impossible or unreasonably difficult for disabled people to make use of any service which is offered to the public, the service provider must 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;
- since 1999, service providers already have a duty to provide a reasonable alternative method for making the service accessible.

Removing or altering barriers is the most effective and desirable way of providing access. The Disability Rights Commission recommends these approaches because they are socially inclusive; however, it does not require a service provider to adopt one way or another. The focus of the Act is on results.

Reasonable adjustments

To follow, some examples of reasonable adjustments to provide improved access to premises:

- A library located in a listed building is accessible by a flight of stairs at its front entrance. Consent to install a ramped entrance has not been obtained. A side entrance for staff use is fully accessible and always open. The library arranges for people with a mobility difficulty to use this staff entrance. The library has made sure that the side entrance is kept uncluttered and is well signposted for disabled users. This is likely to be a reasonable step for the library to take. The library could go further and adopt an inclusive approach by making the side entrance available to everyone (see Guide 9 for examples of good practice).
- A small volunteer-run museum with a small annual budget has been told that it has to install a lift under the DDA, to provide access to the collections on the first floor. The cost of the lift is higher than the museum's annual budget. It is extremely unlikely that this would be considered a reasonable step for the museum to have to make. However, if the museum plans to submit a funding application for a major refurbishment programme, it should include provision for a lift. The museum needs to think of an alternative method for making the collections displayed on the first floor accessible. This could be a video, a catalogue or photographic illustrations. It could be an offer to bring a selection of objects down to the ground floor on request.

Selling, letting or managing premises

If a museum, archive or library providing a public service holds an event open to the public on rented premises, duties under the DDA apply. In the first instance, this means selecting an accessible venue.

A museum, archive or library which rents out premises to a service provider, for example a shop or a restaurant, has a duty to ensure that the leaseholder meets their duties under the DDA or they might find themselves joined in a claim against them.

Provisions under the DDA for the selling, letting or managing of premises can be complex. The Code of Practice 'Rights of Access, Goods, Facilities, Services and Premises' provides very useful guidance (see Further information).

Other legislation and policies

Historic Buildings and Health and Safety Regulations override the DDA. However, they cannot be used as an excuse for inaction. For example, if a museum in a historic listed building needs to apply contrasting nosing to its staircase, it should not assume that this would be impossible. Solutions should be explored with the appropriate conservation officer and the results fully recorded in order to demonstrate that it would not be possible to make alterations.

Buildings and premises built from 1994 onwards may be exempt from the above duties for a period of up to ten years, commencing from the date the building was completed. (Only particular physical features will be exempt and these must comply with the disability access standards of the Building Regulations, Approved Document M 1992 or 1999 for England and Wales; Technical Standards relevant to the physical feature for Scotland). They will nevertheless have to consider other ways to make the service accessible even if the features are exempt (see Guide 9 Accessible Environments for details on the requirements under Building Regulations).

Conclusion

The Disability Discrimination Act aims to eliminate discrimination against disabled people, including in employment and service provision. It has so far stimulated many museums, archives and libraries to improve access for disabled people and many have demonstrated a great deal of creativity in doing so.

The relatively low cost of reasonable adjustments in services has dispelled unjustified fears of rocketing costs. The DDA does not put unreasonable demands on any organisation, but it does impose a set of duties on employers and service providers. These are constantly evolving and organisations are advised to keep up-to-date with changes of legislation. The best way to meet these duties is to make access for disabled people integral to the values and work of your organisation – no matter how small or large it is. What should not differ is a real commitment to access and equal opportunities for disabled people, whereas the extent of reasonable adjustments an organisation can make at any one time may differ.

We hope that this guide has helped you to better understand the DDA, how it works and what your duties are. We hope it has given you ideas about the response your organisation can give to the DDA and contribute towards a world in which disabled people are recognised as equal citizens – an aim which requires our ongoing commitment.

Appendix 1

Definition of reasonable adjustment

Employers and service providers need to make reasonable adjustments under the DDA, so that disabled people are not disadvantaged.

What constitutes a reasonable step for a service provider and employer to make depends on:

- The type of services provided.
- The nature of the organisation, its size and resources.
- The effect of the disability on the individual disabled person.

Some of the key factors which might be taken into account when considering what is reasonable for a service provider and employer include:

- Whether taking any particular steps would be effective in overcoming the difficulty.
- The extent to which it is practicable to take the steps.
- The financial and other costs of making the adjustments.
- The extent of disruption which taking the steps would cause.
- The amount of any resources already spent on making adjustments.
- The availability of financial assistance.

(Source: Code of Practice – Employment, page 15 and Code of Practice – Services, page 46).

(see Further information)

Appendix 2

Definition of Disability

The definition of disability under the Act includes people with severe facial disfigurements and people with HIV who are symptomatic. For the purposes of the Act, a person is regarded as being disabled if they have:

‘a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day-to-day activities.’

Under the Act the term ‘physical impairment’ covers people with a sensory impairment, e.g. visually impaired people and D/deaf and hard of hearing people.

By ‘long term effect’ the Act refers to disabilities:

- That have lasted for at least 12 months.
- The effects of which last for at least 12 months.
- Which are likely to last for the remainder of a person’s life.

Detailed guidance is provided by government about the definition of disability (see Further information). It includes lists of exclusions, such as alcoholism and voyeurism.

There are occasions, such as when an employee complains about discrimination on the grounds of disability, when an employer may need to find out if an employee is a disabled person under the Act. However, in most circumstances, employers and service providers do not need to read this technical guidance in detail. It is far more important that they are aware of who disabled people are and how their needs can be met and that employers provide the support and adjustments needed.

Appendix 3

DDA implementation timetable

Employment (Part 2 of the DDA)

1996: It became unlawful to discriminate against disabled applicants and employees. The duty to make reasonable adjustments and to introduce auxiliary aids and services became compulsory.

2004: These provisions, which apply to employers with 15 or more employees, will be extended to all employees.

Services and premises (Part 3 of the DDA)

1996: It became unlawful to refuse a service to someone on the grounds of disability, to provide a service on different terms or to offer a service of a different standard.

1999: Duty to make reasonable adjustments and to provide auxiliary aids and services duty to provide a service by an alternative method where physical barriers prevent access to a service.

2004: Service providers may have to ensure their buildings and grounds do not prevent disabled people from using their services.

Publicly funded Education Provision – Post 16 (Part 4 of the DDA)

2002: Provisions of Part 3 of the DDA extended to Higher and Further Education (SENDA -Special Educational Needs and Disabilities Act).

Further information

Disability Rights Commission

Provides wide ranging advice and publications, including:

Libraries and Learning Centres Good Practice Guide (about SENDA, the Special Educational Needs Acts) 2004 – *what it means for you: a guide for service providers. Guidance on matters to be taken into account in determining questions relating to the definition of disability.*

Tel: 08457 622633

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Email: enquiry@drc-gb.org

www.drc-gb.org

Employers Forum on Disability

Tel: 020 7403 3020

Textphone: 020 7403 0040

Email: publications@employers-forum.co.uk

www.employers-forum.co.uk

Publications

Access for Users with Disabilities

Society of College, National and University Libraries, April 2003:

How university libraries need to play an integrated part of the institutional response to SENDA.

www.sconul.ac.uk/news/dda_briefing_paper

Code of Practice, Rights of Access. Goods, Facilities, Services and Premises

HMSO/Disability Rights Commission, London, 2002.

Code of Practice for the elimination of discrimination in the field of employment against a disabled person or persons who have had a disability

HMSO, London.

The DDA Codes of Practice give a wealth of examples or scenarios which help gain a much clearer understanding of how the Act applies to real life situations. They are admissible evidence in any proceedings under the Act before a tribunal or court.

Available free from the Disability Rights Commission website:

www.drc-gb.org/law/codes.asp

Available as a publication from the Stationery Office, £9.95.

Tel: 0800 600 5533

Email: book.orders@tso.co.uk

www.clicksto.com

www.tso.co.uk

Costs and benefits to service providers making reasonable adjustments under Part III of the DDA

Research Report 169, Department for Work and Pensions, London 2002.

Museums, Archives and Libraries and the Disability Discrimination Act 1995

South West Museums, Libraries and Archives Council, June 2003.

www.swmlac.org.uk/docs/dda-act.pdf

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- 11 Consulting Disabled People
- 12 Employment at Every Level

The **Disability Portfolio** is a collection of 12 guides on how best to meet the needs of disabled people as users and staff in museums, archives and libraries. It gives invaluable advice, information and guidance to help overcome barriers and follow good practice.

The Portfolio is available in 12 point clear print or 15 point large print formats, braille, audio cassette and on the website. Please contact 020 7273 1458 or info@resource.gov.uk

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