

# **The Disability Discrimination Act 1995 (DDA) – a guide for deaf and hard of hearing customers**

## **About this factsheet**

This factsheet is part of RNID's **Disability Discrimination Act** range. It is written for deaf and hard of hearing people. We use the term deaf people to refer to deaf, deafened and hard of hearing people throughout this factsheet.

This factsheet tells you about the Disability Discrimination Act 1995 (DDA) and how it affects you. It tells you about:

- What the DDA is and who is covered by it.
- How the DDA affects you.
- What are reasonable adjustments?
- When service providers are allowed to treat you less favourably.
- Discrimination and what to do if you are discriminated against.

At the end of this factsheet we give you details of organisations you can contact for further information.

If you would like this factsheet on audio tape, in braille or in large print, fill in the *Want to know more?* form at the end of this factsheet and send it to RNID.

## **What is the DDA?**

The DDA aims to stop discrimination against disabled customers – someone who buys goods, or uses facilities or services. It seeks to give deaf or disabled people equal and enforceable rights and access to

goods, facilities or services. The DDA says that service providers are not allowed to treat disabled people less favourably because of their disability.

## **What is discrimination?**

The DDA says that discrimination is when service providers treat disabled people less favourably because of their disability *and* the treatment cannot be justified.

## **Who is covered by the DDA?**

The DDA gives a definition of disability and if someone fits that definition they are covered by the DDA. The DDA defines disability as “a physical or mental impairment which has a substantial and long term adverse effect on [the person’s] ability to carry out normal day to day activities”.

Guidance for the DDA says that an “inability to hold a conversation with someone talking in a normal voice” or an “inability to hear and understand another person speaking clearly over the voice telephone” counts as a substantial adverse effect under the Act. ‘Substantial’ means “more than minor or trivial”, so only a relatively minor hearing loss is unlikely to fit the definition.

It also says that when the effect of your deafness or hearing loss is being looked at, the effect of background noise should be taken into account. Any steps taken to treat or correct a person’s deafness or hearing loss are ignored for the purposes of the DDA. Importantly, this means that even if you wear a hearing aid, your hearing without the hearing aid is what counts.

People who are not disabled can be covered by the DDA under some circumstances. We tell you more about this in the section, *What is victimisation?*

### **Are service providers liable for others?**

Service providers are also liable – legally responsible – for the actions of their employees or others who work in their business. For example, the brewery that owns a pub is responsible if its bar staff refuse to serve a deaf man because they think he is drunk even though he explains that he is deaf and has a speech impairment, and his hearing aids are clearly visible. If the brewery then uses a bouncer to remove the deaf man from the pub, the brewery could also be liable for the bouncer's actions when the deaf man objects to the way he has been treated. The brewery is responsible even if a security firm employs the bouncer.

### **What is victimisation?**

The DDA also protects disabled people and people who are not disabled if:

- They are victimised by a service provider because they have helped a deaf or disabled person to make a complaint,
- Given evidence, or
- Taken a case against a service provider.

For example, a woman who is not disabled is present in the pub (see *Are service providers liable for others?*) and gives evidence when the deaf man brings the case to court. The next time she goes to the pub, the bar manager refuses to serve her because she has given evidence against him in court. This is an example of victimisation and, under the DDA, the woman could bring her own case to court against the brewery.

## **Service providers covered by the DDA**

Under the DDA, 'service providers' are most companies or organisations that offer goods, facilities or services in the UK to the public. It does not matter whether the services are free or paid for. This includes any company, partnership, sole trader or similar in the following categories:

- Banks, building societies and insurance companies.
- Health services including hospitals and GPs (family doctor).
- Courts, solicitors, and advice and information services.
- Local authority services.
- Cinemas and theatres.
- Railway and bus stations, and travel agents.
- Shops, hotels and restaurants.
- Telecommunications and broadcasting services.
- Sports centres, football grounds and parks.
- Private education and voluntary sector providers.
- Non-educational activities in schools, colleges and universities such as parents' evenings, fundraising activities and students' unions.

Course providers such as local education authorities, universities and colleges are also covered by the DDA. For further information, see our factsheets, *Deaf and hard of hearing students in Further Education – your rights under the Disability Discrimination Act 1995* and *Deaf and hard of hearing students in Higher Education – your rights under the Disability Discrimination Act 1995*.

## **Service providers not covered by the DDA**

Not all service providers are covered by the DDA. These include private clubs, manufacturers and providers of public transport.

## **Private clubs**

Services closed to the public, such as some golf clubs, are not covered by the DDA. However, if a private club sometimes opens to the public, for example for a wedding reception, then it will be covered by the DDA on such occasions.

If anyone can be a member of the club, such as a video club, then it is covered by the DDA.

## **Manufacturers**

The manufacture and design of products is not covered by the DDA because the service is not being provided direct to the public. This means that manufacturers and designers do not have to make changes to their products, packaging or instructions to comply with the DDA, unless they sell direct to the public. For example, film producers do not have to put subtitles on films they make. However, under the terms of the DDA, cinemas do have duties to provide subtitles on any films they show.

## **Public transport**

Public transport vehicles such as buses and trains are not covered by the DDA so discrimination that happens on them is not unlawful.

However, bus and train stations are covered by the DDA. This means that transport companies may need to make 'reasonable adjustments' to make sure that you can access information and ticket sales offices at stations. We tell you more about making 'reasonable adjustments' later.

## **How the DDA affects you**

Under the DDA, it is unlawful for a service provider to treat you less favourably than they would treat a hearing customer or a customer with

a different disability. The DDA says there are four types of unlawful discrimination:

- Refusing to serve you because of your deafness or hearing loss. For example, refusing to allow you and your deaf friends into a pub or refusing to take a call via RNID Typetalk, the national telephone relay service in the UK.
- Offering a lower standard of service or providing a service in a worse manner, such as asking you to wait to be served when a hearing person would not have to wait. A service provider cannot discriminate by being off-hand or rude.
- Providing a service on worse terms, such as asking you for a bigger deposit when you are booking a holiday because the travel company thinks, for no good reason, that you are more likely to cancel your holiday because you are deaf.
- Not making 'reasonable adjustments' if this is necessary to enable you to use the service fully. For example, if a hospital does not provide you with a BSL/English interpreter for a medical appointment then this means they have not made a reasonable adjustment. BSL stands for British Sign Language.

## **What are reasonable adjustments?**

You may be entitled to changes in the way goods, services or facilities are supplied if your deafness or disability makes access to them 'impossible or unreasonably difficult'. Such changes are referred to by the DDA as 'reasonable adjustments'. Below, we explain what this means in practice.

## **Practices, policies and procedures**

The practices, policies and procedures of an organisation are covered by 'reasonable adjustments'. This means that if a service provider works

in a way that makes it impossible or unreasonably difficult for you to use their service, then they should change the way they work. For example, if a service provider has a 'no dogs' policy, they may have to change this policy as it could discriminate against you if you are deaf and you have a hearing dog.

### **Providing the service by reasonable alternative means**

If a physical feature of a service provider's building makes it impossible or unreasonably difficult for you to use their service, then they should make alternative arrangements. For example, if glass screens in a government office make it difficult for you to lipread staff in the office, it may be reasonable for them to offer you a face-to-face interview without glass screens.

### **Additional aids or services**

'Reasonable adjustments' also include providing additional aids or services to enable you to access a service or make it easier for you to do so. Additional aids or services can include:

- **Communication support**

Providing qualified BSL/English interpreters (face-to-face or via videophone), lipspeakers, notetakers or speech-to-text reporters.

- **Equipment**

Providing an induction loop or infrared system, textphone, telephone with an amplifier or an inductive coupler, videophone or a fire alarm with flashing lights.

- **Other**

Making printed information accessible by writing in plain English.

Making sure that video tapes are subtitled, signed or both.

For further information about communication support and equipment, see our leaflets, *Communication services for deaf and hard of hearing people* and *Equipment for deaf and hard of hearing people*.

At present, service providers do not have to provide an additional aid or service if this means making a permanent alteration to their building. However, they should still take steps to overcome the difficulty a deaf or disabled person faces. From 2004, service providers may have to make a permanent alteration to their building (see later, *Physical alterations to buildings*).

### **Changing the fundamental nature of the service**

The DDA does not say service providers should change the fundamental nature of their service. For example, if you wear hearing aids, it is unlikely that a club would need to turn down its music just because you find the music uncomfortable.

### **Physical alterations to buildings**

Service providers will not have to make any adjustments involving a permanent alteration to their buildings until 2004, no matter how minor the change might be. However, from 2004, they will have to consider making physical changes to buildings where it is impossible or unreasonably difficult for you to make use of their services. This means that they may have to install a permanent induction loop, an electronic display board or a videophone, for example.

### **Exemptions from physical alterations to buildings**

In some cases, a service provider may not have to make physical alterations to their building.

The way that buildings are built is regulated by the Building Regulations Act 1999. These say that a building should make 'reasonable accommodation' for people with disabilities to be able to get into and use the building. In practice, this means that a building's physical features, such as lifts and entrances, should make it 'reasonably safe and convenient' for people with disabilities to access the building or any part of it, and to use the building.

The DDA states that if a physical feature in the service provider's building meets with these existing building regulations, then they do not have to make a reasonable adjustment to it until after ten years. This applies if, for example, they already have a ramp or an induction loop fitted in a meeting room.

### **When is it reasonable to make an adjustment?**

This will depend on a number of things, including how practical it is to make the adjustment. This means, for example:

- How easy is it to get a BSL/English interpreter? Interpreters are in short supply. It is also important that the service provider tries to get someone who is suitably qualified.
- How effective is the adjustment? For example, if a service provider installs an induction loop, they should make sure that it works and train their staff in how to use it.
- What would it cost as a proportion of the service provider's finances? For example, a small company might find it difficult to pay for an expensive adjustment, but they might be able to afford a different or cheaper adjustment.
- What has the service provider already spent on making adjustments? This depends on the size of the company, rather than

the actual amount spent. For example, a small company may have a limited amount in their budget to spend on making adjustments.

- Can the service provider get advice about adjustments and help with paying for them? (see *Who pays for the adjustment?*).

### **Who pays for the adjustment?**

Service providers have to pay for and make any adjustments that are reasonable or arrange to have them done.

### **When less favourable treatment is permitted – justification**

The DDA says that a service provider is allowed to treat a disabled person less favourably in some situations. This is called justification.

There are four possible conditions that can allow them to treat you less favourably. However, they have to show that at least one of them applies:

#### **Health and safety**

A service provider can treat any person, including a deaf person, less favourably, for health and safety reasons. For example, they can refuse to provide a service or provide a lower standard of service if, in providing you with the service, there is a genuine health and safety risk.

#### **Incapacity to enter into a contract**

A service provider does not have to enter into a contract with someone who is not capable of entering into a legally enforceable agreement or of giving informed consent, for example a customer with a learning disability. However, a service provider would need to consider if they can help that person by providing the information in plain English.

This does not apply if someone else deals with your affairs, for example your bank account, under a 'power of attorney'.

### **If discrimination is necessary to provide the service**

A service provider can justify discriminating against you if the discrimination is necessary to provide the service, or to provide the service to other members of the public. For example, it may take a service provider a little longer to provide you with a service because of your communication needs. This is a lower standard of service, but necessary in order to provide you with a service.

A service provider may be running a course where you need a BSL/English interpreter. The interpreter is late. However, the service provider starts the course because if they wait for the interpreter to arrive, they will not be able to get through all the information. This is less favourable treatment because it means that you will miss the start of the course. However, it is necessary to provide the service to other people on the course.

### **Greater expense**

A service provider can justify charging you more for some goods or services than it charges other people if the service is individually tailored to your needs. For example, a telephone shop can charge more for an adapted telephone than for a standard telephone. However, a service provider is not allowed to pass on the cost of making reasonable adjustments. For example, if a guesthouse installs a fire alarm with flashing lights, it is unlawful for them to charge you more to cover the cost of the alarm.

## **Proving that discrimination is justified**

Whenever a service provider tries to show that the less favourable treatment is justified, they have to prove two points.

They have to show that at the time of the less favourable treatment, they believed that it was justified.

Secondly, that in the circumstances of that particular situation, a reasonable bystander would think that it was reasonable for the service provider to believe that it was justified. This means that the service provider is not allowed to think of a justification *after* the less favourable treatment has taken place. For example, a restaurant owner refuses to let you and your hearing dog enter the restaurant. The owner later says that he thought that the dog might try to jump up and take food from the table. This is unlikely to be justification if the owner did not give this reason at the time, and also because a reasonable person is unlikely to agree with the reason.

## **Insurance**

The provision of insurance is classed as a service under the DDA. However, there is a justification for discrimination in insurance provision because it is considered reasonable for insurance providers to rely on relevant information to provide insurance. For example, an insurance provider may be able to justify refusing you insurance or increasing the insurance premiums you pay. This is possible if they have reliable figures that show you are more of a risk because of your deafness and you cannot produce evidence to disprove them.

## **Guarantees and deposits**

The DDA also makes special provisions for guarantees and deposits.

If a service provider gives a guarantee that an item will be refunded or replaced if it is damaged, it is not unlawful for them to refuse to honour the guarantee if the damage was caused by a person's disability.

It is also not unlawful to refuse to refund a deposit if damage to goods was caused by someone's disability.

## **What to do if you are discriminated against**

If you have been discriminated against, you may be able to take legal action under the DDA.

Your first step should be to contact the service provider direct and discuss your concerns. Use their complaints procedure if they have one. If you do not feel you can do this, get legal advice from one of the organisations listed under *Further information*.

If discussing your complaint with the service provider does not help, you may be advised to use the Disability Conciliation Service. This service aims to negotiate a settlement between you and the service provider, without going to court.

### **Court action**

If you still cannot reach a settlement with the service provider, the next step is to consider taking your case to the County Court. To do this you must complete form N1, which you can get from your local county court or from the Court Service website, [www.courtservice.gov.uk](http://www.courtservice.gov.uk)

The first step in taking a case to County Court is called 'lodging proceedings'. This will cost you £120. You will then have to pay a further £80 if the service provider decides to fight the case. If you are

unemployed or on a low income, you do not pay anything. The County Court can give you more information about court fees.

You must take any claim for discrimination to court within six months of when you were discriminated against. If you are using the Disability Conciliation Service, your time limit will be extended to eight months.

In most discrimination cases, the award (money) you get will be less than £5,000 and so a claim is usually heard in the Small Claims Track (this used to be called the Small Claims Court). This is less formal and faster than the other tracks of the County Court. If your case is allocated to another track, then you may be able to get help with your legal costs if you are on a low income. In the other tracks the person who loses usually has to pay the winner's legal costs.

### **The County Court as a service provider**

The County Court is a service provider and so they have to make reasonable adjustments to enable you to use their services. You should tell the Court Service Helpline if you need communication support, for example if you want a BSL/English interpreter or a speech-to-text reporter (see *Further information* for contact details).

### **If discrimination is proved**

If the court agrees that you have been discriminated against, it can:

- Make a declaration of the rights of the parties. This means the court agrees that you have suffered unlawful discrimination. This usually happens if you have not lost money or if a point of principle is involved.
- Order the service provider to pay you compensation for hurt feelings and for actual loss. Compensation for hurt feelings is to deal with any hurt or upset that you have felt because you were discriminated

against. Compensation for actual loss might be awarded, for example, if insurers made you pay a higher premium for your insurance.

- In some circumstances, the court may grant an injunction, ordering the service provider to make adjustments

If you think the court has applied the law wrongly, you can appeal against the decision. To do this, you need to get legal advice from the organisations we list under *Further information*.

## **The Human Rights Act 1998**

The Human Rights Act 1998 gives everyone, including disabled people, additional rights. It only applies to public authorities, for example local or central government or an NHS Trust. Depending on the circumstances, you may be able to bring a claim under the Human Rights Act as well as under the DDA. Even if you do not have a claim under the DDA, you might still have a case under the Human Rights Act.

If you bring a disability discrimination case against a service provider to court, then the court must consider whether the Human Rights Act is relevant to any part of the case. The court must do this even if the service provider is not a public authority. For more information, see our factsheet, *The Human Rights Act 1998 – information for deaf people*.

## **Further information**

### **RNID Casework Service**

The RNID Casework Service provides information and advice to the public and professionals on the Disability Discrimination Act 1995 in relation to employment, education and the provision of goods, services and facilities. In some situations, the Casework Service may be able to

help you bring your case to court, and provide you with representation in court.

RNID Casework Service, 19-23 Featherstone Street, London EC1Y 8SL.

Tel: 0808 808 0123. Textphone: 0808 808 9000. Fax: 020 7296 8199.

E-mail: caseworkteam@rnid.org.uk

### **Citizens Advice Bureau (CAB)**

Your local CAB will give free advice on the DDA. In some situations, they may provide representation. See your phonebook for your nearest CAB or do an online search at [www.nacab.org.uk](http://www.nacab.org.uk)

### **Community Legal Service**

The Community Legal Service aims to give information and help about your legal rights. It brings together organisations that give legal advice. The Community Legal Service directory line can give you details of your local advice centre providing help in discrimination cases.

Community Legal Service, Tel: 0845 608 1122.

Textphone: 0845 609 6677.

Website: [www.justask.org.uk](http://www.justask.org.uk)

### **The Disability Law Service (DLS)**

The DLS provides free legal advice to disabled people and representation where appropriate.

DLS, Ground Floor, 39-45 Cavell Street, London E1 2BP.

Tel: 020 7791 9800. Textphone 020 7791 9801.

Open 10am to 1pm and 2 to 5pm, Monday to Friday.

Fax: 020 7791 9802. E-mail: [advice@dls.org.uk](mailto:advice@dls.org.uk)

### **The Disability Rights Commission (DRC) Helpline**

The DRC provides free advice to people who have been discriminated against. They may also provide representation. They also run a

conciliation service to try and resolve problems with service providers without going to court.

Disability Rights Commission, Freepost MID 02164,  
Stratford-upon-Avon CV37 9HY.

Tel: 08457 622 633. Textphone: 08457 622 644.

Open 8am to 8pm, Monday to Friday.

Fax: 08457 778 878. E-mail: [enquiry@drc-gb.org](mailto:enquiry@drc-gb.org)

Website: [www.drc-gb.org](http://www.drc-gb.org)

### **Law centres**

The Law Centres Federation can give you the details of your local law centre. Law centres can provide free advice and representation.

Law Centres Federation, 18-19 Warren Street, London W1P 5DB.

Tel: 020 7387 8570. Fax: 020 7387 8368.

E-mail: [info@lawcentres.org.uk](mailto:info@lawcentres.org.uk) Website: [www.lawcentres.org.uk](http://www.lawcentres.org.uk)

### **Further information from RNID**

If you want to find out more about some of the subjects covered in this factsheet, the following RNID factsheets and information may be useful:

- *Information for deaf people in work or looking for work*
- *The Disability Discrimination Act (DDA) – The DDA and your rights.*  
This video tape is subtitled and presented in BSL by Clive Mason. It costs £5.99 and you can buy it online at [www.rnidshop.com](http://www.rnidshop.com) or contact the RNID Information Line.

The RNID Information Line offers a wide range of information on many aspects of deafness and hearing loss. You can contact us for further copies of this factsheet and the full range of RNID information factsheets and leaflets.

## **RNID Information Line**

RNID Information Line, 19-23 Featherstone Street, London EC1Y 8SL.

Tel: 0808 808 0123. Textphone: 0808 808 9000. Fax: 020 7296 8199.

E-mail: [informationline@rnid.org.uk](mailto:informationline@rnid.org.uk) Website: [www.rnid.org.uk](http://www.rnid.org.uk)

Alternatively, fill in the *Want to know more?* order form at the end of this factsheet and return it to RNID.

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## **RNID Information, April 2003**



### **Want to know more?**

This factsheet is available in **audio tape**, **braille** and **large print**. We can also send you more information on many of the subjects covered in this factsheet. Just tick the boxes below, tell us what you particularly need to know about, or see our website at **[www.rnid.org.uk](http://www.rnid.org.uk)**

### **Please send me:**

*The Disability Discrimination Act 1995 (DDA) – a guide for deaf and hard of hearing customers*

audio tape  braille  large print

The RNID *Publications Catalogue*.

Information about RNID Typetalk and BT TextDirect.

Details of RNID communication services in my area.

RNID's fundraising leaflet. RNID relies heavily on donations from, individuals, companies, trusts and fundraising events. Our leaflet shows how *you* can help.

Details on supporting RNID's future work with a legacy.

Information on how to take part in RNID campaigns.

A copy of the RNID Sound Advantage *Solutions* catalogue, giving details of equipment for deaf and hard of hearing people.

Other information – please tell us what you would like to know.

### **(Please write clearly, using block capitals)**

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We are always keen to know what our customers think about our publications. If you have any suggestions for ways we could improve this factsheet you can use the space below. Please send your suggestions to the address overleaf.

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Please send this information to: (Please write clearly using block capitals)

**Title (Mr/Mrs/Ms/Miss) First Name** \_\_\_\_\_

**Surname** \_\_\_\_\_

**Address** \_\_\_\_\_

**Postcode** \_\_\_\_\_ **E-mail** \_\_\_\_\_

**Telephone** \_\_\_\_\_ **Textphone** \_\_\_\_\_

Your contact details will be held on our database so that occasionally we can send you information on our work. Please tick this box if you do not wish your details to be kept on the database.

We will use any information you give below to monitor requests for this factsheet and help us tailor our services to your needs. You do not have to give this information, but if you do, please tick this box to confirm we may keep it on our database.

**Tick all boxes that apply**

**Is the information:**

- For you
- For a friend or family member
- A professional enquiry

**Are you?**

- At school or below school age
- A student
- Working age
- Retired

**How would you describe yourself?**

- Profoundly/severely deaf
- Hard of hearing
- Hearing
- Hearing aid user
- I have tinnitus
- I have balance problems

**If we could provide it, would you like to receive information in a different format? Please use number 1, 2 or 3 to show your preferred choice.**

- Videotape in British Sign Language (BSL) and with subtitles
- E-mail
- Face-to-face

**If we could provide it, would you like information in another language?**

- Yes. Please tell us which one.

**Please return this form to: RNID Information Line, 19-23 Featherstone Street, London EC1Y 8SL or order from our website at [www.rnid.org.uk](http://www.rnid.org.uk)**