

The Disability Discrimination Act 1995 (DDA) – a guide for providers of goods, facilities and services

About this factsheet

This factsheet is part of RNID's **Disability Discrimination Act** range. It is written for service providers – anyone who sells goods or provides facilities or services to the public.

This factsheet covers:

- What is the DDA?
- Customers and service providers covered by the DDA.
- Service providers not covered by the DDA.
- How the DDA affects you.
- What are reasonable adjustments?
- When less favourable treatment is permitted – justification.
- Putting theory into practice.

We use the term deaf people to refer to deaf, deafened and hard of hearing people throughout this factsheet.

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 disabled people equal and enforceable rights and access to goods, facilities and 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.

Customers 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 someone’s 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 hearing loss are ignored for the purposes of the DDA. Importantly, this means that even if a person uses a hearing aid, their 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?*

Am I liable for others?

You are also liable – legally responsible – for the actions of your employees or others in your 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 if 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 *Am I 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 parent's 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 deaf people 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 you to treat a deaf customer less favourably than you would treat a hearing customer, or a customer with a different disability. The DDA says that there are four types of unlawful discrimination:

- Refusing to serve a deaf person for a reason relating to their deafness. For example refusing to allow a group of deaf people 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 a deaf person to wait to be served when a hearing person would not have to wait. It would also include situations where a service provider was off-hand or rude.
- Providing a service on worse terms, such as asking for a bigger deposit from a deaf person booking a holiday because the travel company thinks, for no good reason, that the deaf person is more likely to cancel their holiday.
- Not making a reasonable adjustment, if this is necessary to enable the deaf person to fully use the service. For example, if a hospital does not provide a deaf patient 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?

Disabled customers may be entitled to changes in the way goods, services or facilities are supplied if their 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 your organisation's work in a way that makes it impossible or unreasonably difficult for a deaf person to use your service, you should change the way you work. For example, if you have a 'no dogs' policy, this may discriminate against a deaf person who uses a hearing dog. If your evacuation procedures mean that deaf people cannot leave your premises safely in case of a fire, then you may have to change your procedures.

Providing the service by reasonable alternative means

If a physical feature of your premises makes it impossible or unreasonably difficult for a deaf person to use your service, you should make alternative arrangements. For example, if glass screens in a government office make it difficult for a deaf person who lipreads to communicate with staff in the office, it may be reasonable for the office to offer a face-to-face interview without glass screens.

Additional aids or services

'Reasonable adjustments' also include providing additional aids or services to enable a deaf person to access a service or make it easier for them to do so. You can do this by providing communication support, the right equipment or other support, for example:

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

Changing the fundamental nature of the service

The DDA does not say that you should change the fundamental nature of your service. For example, it is unlikely that a club would need to turn down its music just because it was uncomfortable to some people with hearing aids.

Physical alterations to buildings

You do not have to make any adjustments involving a permanent alteration to your building until 2004, no matter how small the adjustments. However, from 2004, you will have to consider making physical changes to your building where it is impossible or unreasonably difficult for a disabled person to use your services. This means that you may have to install a permanent induction loop, an electronic display board or a videophone, for example.

You will have to comply with the 2004 duties of the DDA soon, so it is a good idea to start thinking about how you are going to do this now. You could start by having a 'disability access audit' for your building and the way you deliver your services. See later, *Putting theory into practice – how we can help you*.

Exemptions from physical alterations to buildings

In some cases, you may not have to make physical alterations to your 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 your building meets with these existing building regulations, then you do not have to make a reasonable adjustment to it until after ten years. This applies if, for example, you already have a ramp or an induction loop fitted in a meeting room.

For further information, get *The Code of Practice – Rights of Access to the DDA* from the Disability Rights Commission (see *Further information* for contact details).

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 you get someone who is suitably qualified.
- How effective is the adjustment? For example, if you install an induction loop, you should make sure that it works and train your staff in how to use it.
- What would it cost as a proportion of your 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 have you 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 you get advice about adjustments and help with paying for them? (see later, *Who pays for the adjustment?*).

It is advisable for your staff, including managers and directors, and particularly those staff who deal directly with customers, to have deaf and disability awareness training. This will help them to adopt best practice when dealing with disabled customers, in particular deaf customers. This could be a reasonable adjustment, and may be beneficial for your business (see later, *Putting theory into practice – how we can help you*).

Who pays for the adjustment?

You have to pay for and make any adjustments or arrange to have them done. Where possible, consult your deaf or disabled customer to make sure that the adjustment you make suits them. For example, ask a deaf person what sort of communication support they prefer.

You should find out if you can get any financial help to pay for adjustments or if any other organisations can provide help. For example, a local group may supply BSL/English interpreters free or at a reduced charge to some service providers. If you do not find out about such help, or you know about it, but you chose not to make use of it and you then fail to make the adjustment, then it may be difficult for you to show that the failure was justified. We tell you more about this in the next section.

When less favourable treatment is permitted – justification

The DDA says that you can lawfully treat a disabled person less favourably in some situations. This is called justification. There are four possible conditions that could allow you to treat a disabled person less favourably. However, you have to show that at least one of them applies:

Health and safety

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

Incapacity to enter into a contract

You do 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, you would need to consider if you can help that person by providing information in plain English.

This does not apply if the customer has someone who deals with their affairs under a power of attorney.

If discrimination is necessary to provide the service

You can justify discriminating against a deaf person if the discrimination is necessary to provide the service to them, or to provide the service to other members of the public. For example, it may take you a little longer to provide a service to a deaf person because of the deaf person's communication needs. This is a lower standard of service, but necessary in order to provide the service to them.

You may be running a course where a deaf person needs a BSL/English interpreter. The interpreter is late. However, you start the course because if you wait for the interpreter to arrive, you will not be able to get through all the information. This is less favourable treatment because the deaf person will miss the start of the course, but it is necessary to provide the service to other people on the course.

Greater expense

You can justify charging a deaf person more for some goods or services than you charge other people if the service is individually tailored to the needs of that customer. For example, a telephone shop can charge more for an adapted telephone than for a standard telephone. However, you are 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 deaf customers more to cover the cost of the alarm.

Proving that discrimination is justified

Whenever you try to show that the less favourable treatment is justified, you have to prove two points.

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

Secondly, that in the circumstances of that particular situation, a reasonable bystander would think that it was reasonable for you to believe that it was justified. This means that you are not allowed to think of a justification *after* the less favourable treatment has taken place. For example, a restaurant owner may have refused to let a deaf person with a 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 insurance or increasing the insurance premiums for a deaf person. This is possible if they have reliable figures to show that a deaf person was more of a risk and a deaf person could not produce evidence to prove that they were not at risk.

Guarantees and deposits

The DDA also makes special provisions for guarantees and deposits. If you give a guarantee that an item will be refunded or replaced if it is damaged, it is not unlawful for you 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.

If you do not comply with the DDA

A deaf customer who believes they have been discriminated against may take action against you in the County Court. If they are successful, the court has the power to award damages against you, including damages for 'hurt feelings' and, in some circumstances, grant an injunction to order you to make adjustments.

Putting theory into practice – how we can help you

Providing accessible services for deaf people is good customer service. Our training can help your organisation deliver a high quality service to disabled and deaf customers and employees. We can deliver tailor-made training in your workplace anywhere in the UK.

Find out about our *Louder than Words* Charter. It is awarded to organisations offering a high quality, deaf aware service to all their deaf customers, service users and staff.

We can also advise you about the changes that you may need to make if you employ deaf staff and about developing training opportunities for them.

For details, please contact RNID's Training Services (see *Further information*).

The Human Rights Act 1998

The Human Rights Act 1998 gives everyone, including disabled people, additional rights. If you are a public authority, for example local or central government or an NHS Trust, the Human Rights Act applies directly to you. Even if a disabled person does not have a claim under the DDA, they may still have a claim under the Human Rights Act. When providing services to disabled people, you should consider the possible impact of the Human Rights Act.

If a disabled person brings a disability discrimination case against you in 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 you are not a public authority. For more information, see our factsheet, *The Human Rights Act 1998 – information for deaf and hard of hearing 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. The Casework Service can give information on deaf and disability issues to service providers.

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

The Disability Rights Commission (DRC) Helpline

The DRC provides free advice to people who have been discriminated against. It also provides information and advice to service providers about their rights and duties under the DDA.

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: enquiries@drc-gb.org

Website: www.drc-gb.org

RNID Training Services

RNID Training Services offers a range of deaf and disability awareness courses to help managers and staff in the public and private sectors to adopt best practice when dealing with disabled and, in particular, deaf and hard of hearing customers.

RNID Training Services, 1st Floor, Monaco House,
Bristol Street, Birmingham B5 7AS.

Tel: 0121 622 2726. Textphone: 0121 622 1191. Fax: 0121 622 5174.

E-mail: trainingservices@rnid.org.uk Website: www.rnid.org.uk

RNID Sound Advantage

RNID Sound Advantage sells special equipment for deaf people including amplified telephones, textphones and induction loops.

RNID Sound Advantage, 1 Metro Centre, Welbeck Way,
Peterborough PE2 7UH.

Tel: 01733 232607. Textphone: 01733 282020. Fax: 01733 361161.

E-mail: solutions@rnid.org.uk Website: www.rnidshop.com

RNID Typetalk

RNID Typetalk is the telephone relay service that allows deaf and

hearing people to communicate with each other.

RNID Typetalk, John Wood House, Glacier Building, Harrington Road, Brunswick Business Park, Liverpool L3 4DF.

Tel: 0800 7311 888. Textphone: 0800 500 888. Fax: 0151 709 8119.

E-mail: helpline@rnid-typetalk.org.uk

Website: www.rnid-typetalk.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 may be useful:

- *The Disability Discrimination Act 1995 (DDA) – a guide for deaf and hard of hearing customers.*
- *Deaf people and work – a guide for employers.*
- *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 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 Website: www.rnid.org.uk

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RNID Information, April 2003



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Please send me:

The Disability Discrimination Act 1995 (DDA) – a guide for providers of goods, facilities and services 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)

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.

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