

Guidance for the Tourism Industry for Phase 3 – Disability Discrimination Act 2006

The implementation of the Disability Discrimination Act 2006 (“DDA 2006”) in four phases was approved by Tynwald on 15th December 2015.

Earlier phases have already come into effect making it unlawful for a provider of services to discriminate against a disabled person in relation to the provision of goods, facilities and services. Provision introduced under these earlier phases also made it unlawful for landlords and other persons to discriminate against a disabled person in the disposal or management of premises in certain circumstances.

1. Additional duties

Phase 3, commencing 1st January 2018, introduces new duties on a service provider, these include:–

- changing a **practice, policy or procedure** which makes it impossible or unreasonably difficult for a disabled person to make use of its services; and
- providing an **auxiliary aid or service**, if it would enable disabled persons to make use of its service; and
- providing a reasonable **alternative method** of making the service available to disabled persons where a **physical feature** makes it impossible or unreasonably difficult for disabled persons to make use of the service.

2. Code of Practice

The Code of Practice (March 2016 version – GD2016/25) available on the Department of Health and Social Care’s [website](#) contains a lot of guidance and examples to assist service providers. Although it’s recommended to read the whole Code of Practice, the following paragraphs and examples may be of assistance in respect of Phase 3:-

- 4.7 (reproduced in the Schedule for reference) – explains the ‘[new duties](#)’;
- 4.9 to 4.27 (reproduced in the Schedule for reference) – provides explanations and examples of what is meant by “[reasonable adjustments](#)”; and

- 4.32 and 4.33 – (reproduced in the Schedule for reference) explains what the DDA 2006 means by “unreasonably difficult”, which isn’t defined in the Act.

Practices, policies and procedures

- 5.4 to 5.9 (reproduced in the Schedule for reference) – provide explanations and examples in respect of a service providers ‘practices, policies and procedures’, suggesting reasonable steps for service providers to undertake.

Auxiliary aids and services

- 5.10 to 5.29 (reproduced in the Schedule for reference) – provide explanations and examples in respect of auxiliary aids and adaptations.

Note – regulations for phase 3 provide that, until 31st December 2019, the following are not to be treated as auxiliary aids or services - “devices, structures or equipment the installation, operation or maintenance of which would necessitate making a permanent alteration to or which would have a permanent effect on the physical fabric of premises, fixtures, fittings, furnishings, furniture, equipment or materials.”

Overcoming physical features

The duties introduced by section 6(2)(d) of the DDA 2006 provide that where a physical feature makes it impossible or unreasonably difficult for disabled persons to make use of a service the service provider must take reasonable steps to provide an alternative method of providing the service. This is further explained in paragraphs –

- 5.33 (reproduced in the Schedule for reference) – the example of a public enquiry point illustrates the duty introduced in phase 3 (1st January 2018), and then what might be expected in phase 4 (1st January 2020);
- 5.43 to 5.46 (reproduced in the Schedule for reference) – describes what is meant by a “physical feature”;
- 5.51 (reproduced in the Schedule for reference) – explains and provides examples in respect of providing a reasonable means of making the service available.

3. Protecting the nature of a business or service.

Section 6(6) of the DDA 2006 coming into effect with phase 3 provides that a service provider is not required to take any steps that would fundamentally alter the nature of its service, trade, profession or business. Further information and examples can be found in paragraphs 4.28 and 4.29 (reproduced in the Schedule for reference).

4. Additional information

Besides the [Code of Practice](#), the Department of Health and Social Care's DDA webpage – www.gov.im/dda - contains a number of other publications to assist service providers, including:

- [What Service Providers Need to Know](#), and a [Guide for Small to Medium Businesses](#), both contain advice and guidance on the Act;
- Two similar good practice guides, one tailored to [accessible retail](#) and the other [accessible cafés, restaurants and hospitality](#);
- A [self-assessment checklist](#) for service providers who may wish to consider the accessibility of their service, and an [action plan](#) to follow up any improvements noted in the self-assessment checklist;
- [Guidance on the Definition of the Meaning of Disabled](#), whilst this guidance is primarily designed for the High Court, it is also likely to be of value to a range of people and organisations of how the definition operates.

These documents provide advice and examples in respect of the DDA 2006, and may assist service providers consider their current and forthcoming duties under the Act.

Additionally, there is a sample **customer service policy** (download from website) relating to providing goods and service to people which service providers may tailor and adapt specific to their services to show their commitment to making their services available to disabled persons.

This briefing note and the information within is for guidance only and does not impose any legal obligations in itself, nor is it an authoritative statement of the law. It is not intended to be a substitute for a full review of the Code of Practice – Rights of Access, Goods, Facilities, Services and Premises (GD 2016/25) or the Disability Discrimination Act 2006.

Schedule for Reference

Extract of paragraphs from DDA 2006 Code of Practice

NEW DUTIES

4.7 From the 1st January 2018, a service provider will have to take reasonable steps to:

- change a **practice, policy or procedure** which makes it impossible or unreasonably difficult for disabled people to make use of its services;
- provide an **auxiliary aid or service** if it would enable (or make it easier for) disabled people to make use of its services;
- provide a reasonable **alternative method** of making its services available to disabled people where a **physical feature** makes it impossible or unreasonably difficult for disabled people to make use of the services.

REASONABLE ADJUSTMENTS

4.9 It is important that service providers do not assume that the only way to make services accessible to disabled people is to make a physical alteration to their premises (such as installing a ramp or widening a doorway).

Often, minor measures such as allowing more time to serve a disabled customer will help disabled people to use a service. Disability awareness training for staff is also likely to be appropriate. However, adjustments in the form of physical alterations may be the only answer if other measures are not sufficient to overcome barriers to access.

4.10 A service provider should be able to identify the more obvious physical or other barriers or impediments to access by disabled people to its services. Regularly reviewing the way in which it provides its services to the public, for example via periodic disability audits, might help a service provider identify any less obvious or unintentional barriers to access for disabled people.

Obtaining the views of disabled customers and disabled employees will also assist a service provider. Disabled people know best what hurdles they face in trying to use the services provided. They can identify difficulties in accessing services and might also suggest solutions involving the provision of reasonable adjustments.

In addition, local and national disability groups or organisations of disabled people have extensive experience which service providers can draw on. Listening carefully and responding to what disabled people really want helps service providers find the best way of meeting disabled people's requirements and expectations.

4.11 Employee training is also an important factor in providing reasonable adjustments. Employees should be generally aware of the requirements of disabled customers and potential customers and should appreciate how to respond appropriately to requests for a reasonable adjustment. They should know how to provide an auxiliary service and how to use any auxiliary aids which the service provider offers.

Employees could also be encouraged to acquire additional skills in serving disabled people; for example, communicating with hearing impaired people and those with speech impairments.

Use of reasonable adjustment examples

4.12 Section 6 of the 2006 Act refers to such steps as it is reasonable, in all the circumstances of the case, for the service provider 'to have to take' to make its services accessible to disabled people.

The examples in this Code use the same language by discussing whether the step in the example concerned is likely to be a reasonable step for the service provider 'to have to take'. This is not intended to indicate that the step considered in the example is the only way in which the service provider can meet its duty under the 2006 Act.

In any particular case, the service provider's duty to make reasonable adjustments might be discharged by taking a different step or steps.

To whom is the duty to make reasonable adjustments owed?

4.13 A service provider's duty to make reasonable adjustments is a duty owed to disabled people at large. It is not simply a duty that is weighed-up in relation to each individual disabled person who wants to access a service provider's services. Disabled people are a diverse group with different requirements, which service providers need to consider.

At what point does the duty to make reasonable adjustments arise?

4.14 Service providers should not wait until a disabled person wants to use a service which they provide before they give consideration to their duty to make reasonable adjustments. They should be thinking now about the accessibility of their services to disabled people. Service providers should be planning continually for the reasonable adjustments they need to make, whether or not they already have disabled customers. They should anticipate the requirements of disabled people and the adjustments that may have to be made for them. In many cases, it is appropriate to ask customers to identify whether they have any particular requirements and, if so, what adjustments may need to be made.

Failure to anticipate the need for an adjustment may render it too late to comply with the duty to make the adjustment. Furthermore, it may not of itself provide a defence to a claim that it was reasonable to have provided one.

An invitation to the public to make submissions and to attend a public inquiry indicates that any reasonable adjustments will be made on request if this will assist disabled people to make submissions or to attend the inquiry. This helps to ensure that the public inquiry is accessible.

Does the duty of reasonable adjustment apply even if the service provider does not know that the person is disabled?

4.15 A service provider owes a duty of reasonable adjustment to 'disabled persons' as defined by the 2006 Act. This is a duty to disabled people at large, and applies regardless of whether the service provider knows that a particular member of the public is disabled or whether it currently has disabled customers.

4.16 For this reason, employees should be made aware that they may be discriminating unlawfully even if they do not know that a customer is disabled and they should be reminded that not all impairments are visible.

As explained in this chapter and in Chapters 3 and 5, the duty of reasonable adjustment is best met by the service provider trying to anticipate the types of problems which could arise, and by training its employees to enquire rather than act on assumptions. The aim should be that, when disabled customers request services, the service provider has already taken all reasonable steps to ensure that they can be served without being put to unreasonable difficulty.

Must service providers anticipate every barrier?

4.17 When considering the provision of a reasonable adjustment, a service provider should be flexible in its approach. However, there may be situations where it is not reasonable for a service provider to anticipate a particular requirement.

4.18 Once a service provider has become aware of the requirements of a particular disabled person who uses or seeks to use its services, it might then become reasonable for the service provider to take a particular step to meet these requirements. This is especially so where a disabled person has pointed out the difficulty which they face in accessing services, or has suggested a reasonable solution to that difficulty.

How long does the duty continue?

4.19 The duty to make reasonable adjustments is a continuing duty. Service providers should keep the duty under regular review in the light of their experience with disabled people wanting to access their services. In this respect it is an evolving duty, and not something that needs simply to be considered once, and once only, and then forgotten.

What was originally a reasonable step to take might no longer be sufficient and the provision of further or different adjustments might then have to be considered.

A large sports complex amends its 'no dogs' policy to allow entry to guide dogs. It offers guide dog users a tour of the complex to acquaint them with routes. This is likely to be a reasonable step for it to have to take at this stage. However, the complex then starts building work and this encroaches on paths within the complex, making it difficult for guide dog users to negotiate their way around. Offering an initial tour is therefore no longer an effective adjustment as it does not make the complex accessible to guide dog users. The service provider therefore decides to offer guide dog users appropriate additional assistance from staff whilst the building work is being undertaken. This is likely to be a reasonable step for the service provider to have to take in the circumstances then existing.

4.20 Equally, a step which might previously have been an unreasonable one for a service provider to have to take could subsequently become a reasonable step in the light of changed circumstances. For example, technological developments may provide new or better solutions to the problems of inaccessible services.

A library has a small number of computers for the public to use. When the computers were originally installed, the library investigated the option of incorporating text to speech software for people with a visual impairment. It rejected the option because the software was very expensive and not particularly effective. It would not have been a reasonable step for the library to have to take at that stage. The library proposes to replace the computers. It makes enquiries and establishes that text to speech software is now efficient and within the library's budget. The library decides to install the software on the replacement computers. This is likely to be a reasonable step for the library to have to take at this time.

What is meant by 'reasonable steps'?

4.21 Section 6 refers to a service provider being under a duty to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to make reasonable adjustments. The 2006 Act does not specify that any particular factors should be taken into account. What is a reasonable step for a particular service provider to have to take depends on all the circumstances of the case. It will vary according to:

- the type of services being provided;
- the nature of the service provider and its size and resources;
- the effect of the disability on the individual disabled person.

4.22 However, without intending to be exhaustive, the following are some of the factors which might be taken into account when considering what is reasonable:

- whether taking any particular steps would be effective in overcoming the difficulty that disabled people face in accessing the services in question;
- the extent to which it is practicable for the service provider to take the steps;
- the financial and other costs of making the adjustment;
- the extent of any disruption which taking the steps would cause;
- the extent of the service provider's financial and other resources;
- the amount of any resources already spent on making adjustments;
- the availability of financial or other assistance.

Customers in a busy post office are served by staff at a counter after queuing in line. A disabled customer with arthritis wishes to purchase a TV licence. The customer experiences great pain if they have to stand for more than a couple of minutes. Other customers would not expect to have to undergo similar discomfort in order to buy a TV licence. Thus, the post office's queuing policy makes it unreasonably difficult for the disabled person to use the service. Consideration will have to be given to how the queuing policy could be adjusted so as to accommodate the requirements of such disabled customers.

The post office staff could ask the customer to take a seat and then serve them in the same way as if they had queued. Alternatively, it might provide a separate service desk with seating for disabled customers. Depending on the size of the post office, these might be reasonable steps to have to take to adjust the queuing policy. However, it is not likely to be a reasonable step for the post office to send a member of staff to the disabled customer's home in order to sell them the TV licence. The time and expense involved would probably be an unreasonable use of the post office's resources, particularly in proportion to the degree of benefit to the disabled customer.

4.23 It is more likely to be reasonable for a service provider with substantial financial resources to have to make an adjustment with a significant cost than for a service provider with fewer resources. The resources available to the service provider as a whole are likely to be taken into account as well as other calls on those resources. Where the resources of the service provider are spread across more than one business unit or profit centre, the calls on them all are likely to be taken into account in assessing reasonableness.

A small retailer has two shops within close proximity to each other. It has conducted an audit to identify what adjustments for disabled people will be needed. At one of its shops, customers with mobility impairments cannot use all the services provided.

The other shop can be easily reached by such customers and offers the same services, all of which are accessible to disabled people. Although the retailer originally hoped to make its services in both shops equally accessible, it is constrained by its limited resources. Therefore, for the present, it decides not to make all the services at the first shop accessible to customers with mobility impairments. In these circumstances, it is unlikely to be in breach of the 2006 Act.

4.24 Service providers should bear in mind that there are no hard and fast solutions. Action which may result in reasonable access to services being achieved for some disabled people may not necessarily do so for others. Equally, it is not enough for service providers to make some changes if they still leave their services impossible or unreasonably difficult for disabled people to use.

The organiser of a large public conference provides qualified sign language interpreters to enable delegates who are deaf to follow and participate in the conference. However, this does not assist delegates with mobility or visual impairments to access the conference, nor does it help delegates with a hearing impairment who do not use sign language but who can lipread. The conference organiser will need to consider the requirements of these delegates also.

4.25 Similarly, a service provider will not have taken reasonable steps if it attempts to provide an auxiliary aid or service which in practice does not help disabled people to access the service provider's services.

The way in which an auxiliary aid or service is provided may be just as important as the auxiliary aid or service itself.

Despite providing qualified sign language interpreters for deaf delegates, the conference organiser fails to ensure that those delegates have the option to be seated near and in full view of the interpreters (who are themselves in a well-lit area). As a result, not all those delegates are able to follow the interpretation. The auxiliary service provided has not been effective in making the conference fully accessible to those deaf delegates.

4.26 Once a service provider has decided to put a reasonable adjustment in place, it is important to draw its existence to the attention of disabled people. The service provider should also establish a means for letting disabled people know how to request assistance. This might be done by a simple sign or notice at the entrance to the service provider's premises or at a service point.

Alternatively, the availability of a reasonable adjustment might be highlighted in forms or documents used by the service provider, such as publicity materials. In all cases, it is important to use a means of communication which is itself accessible to disabled people.

An airport provides transfer by electric buggy between terminals and gates for passengers with a mobility impairment. Prominent signs at the entrance to the arrivals and departures halls and at check-in desks assist disabled passengers in accessing that auxiliary service.

A hospital has its forms and explanatory literature in accessible alternative formats such as large print, audiotape and Braille. A prominent note to that effect on the literature sent to patients, or a specific mention of this by reception staff when a patient first visits the hospital, assists disabled patients to access the service.

4.27 If, having considered the issue thoroughly, there are genuinely no steps that it would be reasonable for a service provider to take to make its services accessible, the service provider is unlikely to be in breach of the law if it makes no changes. Such a situation is likely to be rare.

WHAT IS 'UNREASONABLY DIFFICULT'

4.32 It is unlawful for a service provider to discriminate against a disabled person in failing to comply with a duty to make reasonable adjustments when the effect of that failure is to make it impossible or 'unreasonably difficult' for the disabled person to make use of services provided to the public. The 2006 Act does not define what is meant by 'unreasonably difficult'.

4.33 However, when considering if services are unreasonably difficult for disabled people to use, service providers should take account of whether the time, inconvenience, effort, discomfort or loss of dignity entailed in using the service would be considered unreasonable by other people if they had to endure similar difficulties (see the example at paragraph 4.22 above).

PRACTICES, POLICIES AND PROCEDURES

5.4 When a service provider is providing services to its customers, it will have established a particular way of doing this. Its practices (including policies and procedures) may be set out formally or may have become established informally or by custom. A service provider might have a practice which - perhaps unintentionally - makes it impossible or unreasonably difficult for disabled people to make use of its services.

5.5 In such a case, the service provider must take such steps as it is reasonable for it to have to take, in all the circumstances, to change the practice so that it no longer has that effect. This may simply mean instructing staff to waive a practice or amending a policy to allow exceptions or abandoning it altogether. Often, such a change involves little more than an extension of the courtesies which most service providers already show to their customers.

A restaurant has a policy of refusing entry to diners who do not wear a collar and tie. A disabled person who wishes to dine in the restaurant is unable to wear a tie because they have a form of psoriasis (a skin complaint) significantly affecting their face and neck. Unless the restaurant is prepared to waive its policy, its effect is to exclude the disabled customer from the restaurant. This is likely to be unlawful.

A DVD 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 disabilities prevents them from obtaining a driving licence (for example, blind people or some people with epilepsy or mental ill health). 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. This is likely to be a reasonable step for the shop to have to take.

What are practices, policies and procedures?

5.6 Practices, policies and procedures relate to the way in which a service provider operates its business or provides its services. This includes any requirements that it makes of its customers. In principle, the terms cover:

- what a service provider actually does (its practice);
- what a service provider intends to do (its policy);
- how a service provider plans to go about it (its procedure).

However, the three terms overlap and it is not always sensible to treat them as separate concepts.

A DIY superstore has a policy of not allowing dogs onto its premises. Members of staff are instructed to prevent anyone with a dog from entering the superstore. The 'no dogs' policy is enforced in practice by this procedure. The policy makes it unreasonably difficult for disabled people accompanied by a guide or assistance dog to use the DIY superstore. The superstore has a duty to take such steps as are reasonable for it to have to take to avoid that effect and 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 or assistance dog. This is likely to be a reasonable step for the superstore to have to take.

What are 'reasonable steps' in relation to practices, policies and procedures?

5.7 The 2006 Act does not define what are 'reasonable steps' for a service provider to have to take in order to change its practices. The kinds of factors which may be relevant are described in paragraphs 4.21 - 4.27 above.

5.8 The purpose of taking the steps is to ensure that the practice no longer has the effect of making it impossible or unreasonably difficult for disabled people to use a service. Where there is an adjustment that the service provider could reasonably put in place and which would make the service accessible, it is not sufficient for the service provider to take some lesser step which would not result in the service being accessible.

A medium-sized supermarket installs one extra-wide check-out lane intending it to be available to customers who are wheelchair users or accompanied by infants. However, that check-out lane is also designated as an express lane available only to shoppers with 10 or less items. The effect of this practice is to exclude wheelchair- users from taking advantage of the accessible check-out unless they are making only a few purchases. It is likely to be a reasonable step for the supermarket to have to take to amend its practice by designating another check- out lane as the express lane.

5.9 A practice may have the effect of excluding or screening out disabled people from enjoying access to services, or the practice may create a barrier or hurdle which makes it unreasonably difficult for disabled people to access the services. In such cases, unless the practice can be justified, a reasonable step for a service provider to have to take might be to abandon it entirely or to amend or modify it so that it no longer has that effect.

A town hall has procedures for the evacuation of the building in the event of a fire or emergency. Visitors are required to leave the building by designated routes. The emergency procedures are part of the way in which the town hall provides services to its visitors. It modifies the procedures (with the agreement of the local fire safety officer) to enable visitors with mobility or sensory impairments to be evacuated safely. This is likely to be a reasonable step for the town hall to have to take.

A hotel refurbishes a number of rooms on each floor which are fully accessible to disabled guests. However, the hotel's reservations system allocates rooms on a first come, first served basis as guests arrive and register. The effect is that on some occasions the specially refurbished rooms are allocated to non-disabled guests, and late-arriving disabled guests cannot be accommodated in those rooms. The hotel decides to change its reservation policy, so that the accessible rooms are either reserved for disabled guests in advance or are allocated last of all. This is likely to be a reasonable step for the hotel to have to take.

AUXILIARY AIDS AND ADAPTIONS

What is the duty to provide auxiliary aids or services?

5.10 A service provider must take reasonable steps to provide auxiliary aids or services if this would enable (or make it easier for) disabled people to make use of any services which it offers to the public.

What is an auxiliary aid or service?

5.11 The 2006 Act gives two examples of auxiliary aids or services: the provision of information on audiotape and the provision of a sign language interpreter.

A building society provides information on an audiotape about its savings accounts. A customer with a visual impairment can use the audiotape at home or in a branch to decide whether to open an account. This is an auxiliary aid.

A department store has a member of staff able to communicate with deaf clients who use sign language. This is an auxiliary service.

5.12 But these are only illustrations of the kinds of auxiliary aids or services which a service provider might need to consider. An auxiliary aid or service might be the provision of a special piece of equipment or simply extra assistance to disabled people from (perhaps specially trained) staff. In some cases a technological solution might be available.

A large supermarket provides specially designed shopping baskets and trolleys which can be easily used by wheelchair users or people with reduced mobility. It also provides electronic hand-held bar code readers with synthesised voice output which helps customers with a visual impairment to identify goods and prices. These are auxiliary aids which enable disabled shoppers to use the supermarket's services.

Disabled customers with a visual impairment or a learning disability may need assistance in a large supermarket to locate items on their shopping list. The supermarket instructs one of its employees to find the items for them. The supermarket is providing an auxiliary service which makes its goods accessible.

A petrol station decides that an assistant will help disabled people use the petrol pumps on request. It places a prominent notice at the pumps advertising this. This is an auxiliary service.

5.13 In any event, service providers should ensure that any auxiliary aids they provide are carefully chosen and properly maintained.

A person with a hearing impairment is attending a performance at a theatre. When booking the tickets the customer is told that the theatre auditorium has an induction loop. However, the theatre does not check that the loop is working and on the day of the performance the system is not working properly. Although the theatre has provided an auxiliary aid, its failure to check that the loop is working properly means that the theatre is unlikely to have taken reasonable steps to enable disabled people to make use of its services.

5.14 What is an appropriate auxiliary aid or service will vary according to the type of service provider, the nature of the services being provided, and the requirements of the disabled customers or potential customers.

Auxiliary aids and services are not limited to aids to communication.

A community centre is accessed by two raised steps. It provides a suitably chosen portable ramp which helps disabled people with a mobility impairment to enter the premises safely. This is an auxiliary aid which is suited to the requirements of those people.

A new cinema complex has deep airline-style seats. A disabled patron with restricted growth finds it difficult to see the screen when using such a seat. The cinema provides a bolster cushion on request which enables the person to enjoy the film. This is an auxiliary aid appropriate to the circumstances.

A museum provides a written guide to its exhibits. It wants to make the exhibits accessible to visitors with learning disabilities. The museum produces a version of the guide which uses plain language, text and pictures to explain the exhibits. This is an auxiliary aid suited to visitors with learning disabilities and may also benefit other people.

A solicitors' firm lends an audiotape recorder to a client with multiple disabilities who is unable to communicate in writing or to attend the firm's office. The client uses this auxiliary aid in order to record their instructions or witness statement. The client would be expected to return the recorder after use.

What are 'reasonable steps' in relation to auxiliary aids or services?

5.16 The duty to provide auxiliary aids or services requires the service provider to take such steps as it is reasonable for it to have to take in all the circumstances of the case to make its services accessible to disabled people. What might be reasonable for a large service provider (or one with substantial resources) might not be reasonable for a smaller service provider. The size of the service provider, the resources available to it and the cost of the auxiliary service are relevant factors.

A museum has hourly guided tours of a popular major exhibition. It provides a radio microphone system for hearing aid users to accompany the tour and on one day a week has a qualified sign language interpreter available. The museum advertises this service and encourages sign language users to book space with the interpreter on the tours on that day. These are likely to be reasonable steps for the museum to have to take.

A small, private museum with limited resources provides a daily guided tour of its exhibits. It investigates the provision of equipment for hearing aid users such as an induction loop in the main gallery or a radio microphone system to accompany the tour, but, after careful consideration, it rejects both options as too expensive and impracticable. Instead, with little effort or cost, the museum decides to provide good quality audiotaped guides (with an option of plug-in neck loops) which can be used by people with hearing aids who want to follow the guided tour. This is likely to be a reasonable step for the museum to have to take.

5.17 The reasonableness of the service provider's response to disabled people's requirements will inevitably vary with the circumstances. The kinds of factors which may be relevant are described in paragraphs 4.21 - 4.27 above.

A hospital physiotherapist has a new patient who uses sign language as their main means of communication. The hospital arranges for a qualified interpreter to be present at the initial assessment, which requires a good level of communication on both sides.

At this initial assessment the physiotherapist and the disabled patient also discuss what other forms of communication services or aids would be suitable. They agree that for major assessments an interpreter will be used, but that at routine treatment appointments they will communicate with a notepad and pen. This is because these appointments do not require the same level or intensity of communication. This is likely to be a reasonable step for the hospital to have to take.

5.18 For a deaf person who uses sign language as their main form of communication, having a qualified sign language interpreter is the most effective method of communication. This is because for people whose first language is sign language (rather than a spoken or written language) exchange of written notes or lipreading can be an uncertain means of communication.

Sign language interpretation may not be easily available and should be arranged in advance wherever possible. If an interpreter is not available, the service provider should consider an alternative method of communication, in consultation with the deaf person.

5.19 A service provider will have to consider what steps it can reasonably take to meet the individual requirements of disabled people. How effectively the service provider is able to do so will depend largely on how far it has anticipated the requirements of its disabled customers.

Many things that seem impossible at the time they are confronted might have been accommodated relatively easily if prior thought had been given to the question.

5.20 The 2006 Act leaves open what particular auxiliary aids or services might be provided in specific circumstances. Disabled people may be able to help the service provider to identify difficulties in accessing the service and what kind of auxiliary aid or service will overcome them. It is good practice to include disabled customers in the process of considering what reasonable adjustments should be made. However, the duty remains on the service provider to determine what steps it needs to take.

Using auxiliary aids or services to improve communication

5.21 In many cases, a service provider will need to consider providing auxiliary aids or services to improve communication with people with a sensory impairment (such as those affecting hearing or sight), or a speech impairment, or learning disabilities. The type of auxiliary aid or service will vary according to the importance, length, complexity or frequency of the communication involved. In some cases, more than one type of auxiliary aid or service might be appropriate, as different people have different communication requirements. Account should also be taken of people with multiple communication disabilities, such as deafblindness or combined speech and hearing disabilities.

A cinema offers patrons a telephone booking service. Its booking office installs a textphone and trains its staff to use it. This offers access to deaf patrons and is likely to be a reasonable step for the cinema to have to take.

The booking office of a small heritage railway decides to communicate with passengers who have speech or hearing impairments by exchanging written notes. This is likely to be a reasonable step for this service provider to have to take. However, it is unlikely to be a sufficient reasonable adjustment for the booking office at a main rail or tram terminus to make for such passengers. Instead, it installs an induction loop system and a textphone. These are likely to be reasonable steps for a large station to have to take.

Provision for people with a hearing disability

5.22 For people with hearing disabilities, the range of auxiliary aids or services which it might be reasonable to provide to ensure that services are accessible might include one or more of the following:

- written information (such as a leaflet or guide);

- a facility for taking and exchanging written notes;
- a verbatim speech-to-text transcription service;
- induction loop systems;
- subtitles;
- videos with sign language interpretation;
- information displayed on a computer screen;
- accessible websites;
- textphones, telephone amplifiers and inductive couplers;
- teletext displays;
- audio-visual telephones;
- audio-visual fire alarms;
- qualified sign language interpreters or lipspeakers.

A deaf defendant in court proceedings uses sign language as their main form of communication. The court arranges for a qualified sign language interpreter to interpret and voice-over the defendant's evidence in Court. This is likely to be a reasonable step for the Court to have to take.

A hearing impaired person who lipreads as their main form of communication wants a secured loan from a bank. In the initial stages it might be reasonable for the bank to communicate with the disabled person by providing printed literature or information displayed on a computer screen. However, before a secured loan agreement is signed, this particular bank usually provides a borrower with an oral explanation of its contents. At that stage it is likely to be reasonable, with the customer's consent, for the bank to arrange for a qualified lipspeaker to be present, so that any complex aspects of the agreement can be fully explained and communicated.

A television broadcasting company provides teletext subtitles to some of its programmes. This enables viewers with a hearing impairment to follow the programmes more easily. This is likely to be a reasonable step for the broadcasting company to have to take.

5.23 Where sign language interpretation is used as an auxiliary service, the interpreter should be capable of communicating accurately and efficiently with both the disabled person and the other parties involved. Other interpretation services such as lipspeakers and Makaton communicators should similarly be capable of communicating accurately and effectively.

5.24 Service providers should bear in mind that hearing impairments take many forms and are of varying degrees. What might be a reasonable auxiliary aid or service for a person with tinnitus or reduced hearing might not be a reasonable adjustment for someone who is profoundly deaf.

A coach station fits an induction loop system at its booking office. This ensures that customers who have reduced hearing and use hearing aids are able to communicate effectively with the booking office. However, this does not help profoundly deaf customers.

The coach company instructs its staff to take time to communicate by using a pen and notepad to discover what the customer wants and to give information. The staff are also trained to speak looking directly at the customer to enable those customers who can lipread to do so. These are likely to be reasonable steps for the bus station to have to take.

Provision for people with a visual impairment

5.25 For people with visual impairments, the range of auxiliary aids or services which it might be reasonable to provide to ensure that services are accessible might include one or more of the following:

- readers;
- documents in large or clear print, Moon or Braille;
- information on computer disk or e-mail;
- information on audiotape;
- telephone services to supplement other information;
- spoken announcements or verbal communication;
- accessible websites;
- assistance with guiding;
- audio-description services;
- large print or tactile maps/plans and three- dimensional models;
- touch facilities (for example, interactive exhibits in a museum or gallery).

A restaurant changes its menus daily. For that reason it considers it is not practicable to provide menus in alternative formats, such as Braille. However, its staff spend a little time reading out the menu for customers with a visual impairment, and the restaurant ensures that there is a large print copy available. These are likely to be reasonable steps for the restaurant to have to take.

A utility company supplying gas or electricity to domestic customers sends out quarterly bills. On request, the company is willing to provide the bills in alternative formats such as Braille or large print for customers with visual impairments. This is likely to be a reasonable step for the utility company to have to take.

Every year a local authority sends out information to local residents about its services. Because the information is important, the authority provides copies in large print. On request, it is also prepared to supply the information in alternative media such as Braille or audiotape or to explain its services to individual residents with visual impairments. These are likely to be reasonable steps for the authority to have to take.

A customer with a visual impairment wishes to buy an MP3 player from a small specialist hi-fi shop. The shop arranges for a member of staff to assist the customer by reading out product details, packaging information or prices. This is likely to be a reasonable step for the shop to have to take.

5.26 As with other forms of sensory impairments, visual disabilities are of varying kinds and degrees. Service providers need to consider what is the most appropriate auxiliary aid or service to provide. More than one auxiliary aid or service may be necessary according to the circumstances.

A small estate agent is reviewing the accessibility of its sales literature for clients who are partially sighted or blind. Because of the nature of the service it provides and the size of its business, the estate agent concludes that it is not practicable to make particulars of houses for sale available in Braille. However, the estate agent decides to change the print size and redesign the appearance of its written sales particulars.

This makes the estate agent's sales information more accessible to its partially sighted clients, but does not assist those who are blind. It therefore also decides to put the information on audiotape on request. These are likely to be reasonable steps for the estate agent to have to take.

A social security office ensures that claim forms and information literature are available in large print for partially sighted claimants. It also arranges for the forms and literature to be provided in Braille or audiotape on request. These are likely to be reasonable steps for the social security office to have to take.

Provision for people with other disabilities or multiple disabilities

5.27 There are many examples of how auxiliary aids or services can be used to improve communication with people who have hearing or visual impairments. Service providers should also consider how communication barriers can be overcome for people with other disabilities. For example, a customer with a learning disability may be able to access a service by the provision of documents in large, clear print and plain language or by the use of colour coding and illustrations.

A coach company issues its staff at a ticket office with a card showing destinations, types of tickets and prices. It trains the staff, so that customers with learning disabilities can point to or ask for the options on the card that they want. These are likely to be reasonable steps for the coach company to have to take.

5.28 Service providers should not assume that their services are made accessible to customers with multiple disabilities simply by providing auxiliary aids or services which are suitable for people with individual disabilities.

5.29 For example, deafblind people (individuals who have a significant combined sight and hearing impairment) are not necessarily assisted in accessing services by the simple provision of communication aids designed for use by people with hearing disabilities or visual impairments. Such aids could assist deafblind people if appropriately used (for example, information leaflets produced in Braille, good lighting and acoustics, induction loop systems, etc.).

However, what is appropriate will depend on the nature and extent of the individual's dual sensory impairment, and the methods they use to communicate and access information. Adjustments which may be of assistance to a deafblind person might include engaging a deafblind manual interpreter for important meetings or having a member of staff trained in specific ways to help a deafblind person. Where service providers give their staff disability awareness training, they should consider including ways of helping deafblind people, such as guiding them safely and tracing capital letters and numbers on the palm of the hand.

A branch of a bank with a regular customer who is deafblind has a particular staff member trained in communicating with deafblind people. At the customer's request, the bank arranges for statements and letters to be sent in Braille. These are likely to be reasonable steps for the bank to have to take.

OVERCOMING PHYSICAL FEATURES

5.33 In considering whether or not a service provider has taken reasonable steps to comply with its duties after 1st January 2020, a Court might take into account the time that the service provider has had prior to that date to make preparations.

A public inquiry point is located on the second floor of a Government office building and is accessed by a flight of stairs. This makes it impossible or unreasonably difficult for some disabled people to get to it. People with a mobility disability, for example, may find using the stairs difficult.

From 1st January 2018 the Government Department will have to consider what it could do to provide a reasonable alternative method of making its inquiry service accessible to disabled members of the public. For example, it might provide the service in the form of a telephone inquiry line. This may be a reasonable alternative method of providing the service if it effectively delivers the service in another way.

However, if it does not do so (for instance, if staff at the inquiry point also help people to complete forms and that cannot be done by telephone), the provision of a telephone service may not be a reasonable alternative. The Department will then have to consider whether there are other reasonable steps it can take to provide the same service. For example, it might provide a courtesy telephone on the ground floor to enable disabled people to call staff down to help them.

Despite this, if the service is still not accessible to all disabled people, from 1st January 2020 further reasonable steps may involve a physical alteration of some kind. For example, it might be reasonable to install a lift or to move the inquiry point to the ground floor. Although there is no requirement to make physical alterations before 1st January 2020, it may be sensible to consider and give effect to such possibilities before then, especially if refurbishment of the building is being planned.

What is a 'physical feature'?

5.43 A 'physical feature' includes:

- any feature arising from the design or construction of a building on the premises occupied by the service provider;
- any feature on those premises or any approach to, exit from or access to such a building;
- any fixtures, fittings, furnishings, furniture, equipment or materials in or on such premises;
- any fixtures, fittings, furnishings, furniture, equipment or materials brought onto premises (other than those occupied by the service provider) by or on behalf of the service provider in the course of (and for the purpose of) providing services to the public;
- any other physical element or quality of land comprised in the premises occupied by the service provider;

All these features are covered whether temporary or permanent. A building means an erection or structure of any kind.

5.44 Physical features will include steps, stairways, kerbs, exterior surfaces and paving, parking areas, building entrances and exits (including emergency escape routes), internal and external doors, gates, toilet and washing facilities, public facilities (such as telephones, counters or service desks), lighting and ventilation, lifts and escalators, floor coverings, signs, furniture, and temporary or movable items (such as equipment and display racks). This is not an exhaustive list.

5.45 Where physical features are within the boundaries of a service provider's premises, and are making it impossible or unreasonably difficult for disabled people to use the service, then the duty to make reasonable adjustments will apply. This will be the case even if the physical features are outdoors; for example, the paths and seating in a pub garden.

5.46 Where the physical features are within the remit of a Local Authority, it will have a duty as a service provider to make reasonable adjustments.

A Local Authority has placed some benches on the pavement of a busy main road, which is also a shopping street. These benches are very low and have no arms. Some disabled people are finding them very difficult to use. The Local Authority decides to make simple alterations to the benches, so that they have arms and are slightly higher. This is likely to be a reasonable step for the Local Authority to have to take.

Providing a reasonable alternative method of making services available

5.51 Providing a reasonable alternative method of making services available to disabled people may also be a reasonable step for a service provider to take. The 2006 Act requires that any alternative method of making services available must be a 'reasonable' one. Relevant considerations in this respect may include whether the provision of the service in this way significantly offends the dignity of disabled people and the extent to which it causes disabled people inconvenience.

A small self-service pharmacist's shop has goods displayed on high shelving separated by narrow aisles. It is not practicable to alter this arrangement. The goods are not easily accessible to many disabled people. The shop decides to provide a customer assistance service. On request, a member of staff locates goods and brings them to the cash till for a disabled customer. This is the provision of a service by an alternative method, which makes the service accessible for disabled people. This is likely to be a reasonable step for the shop to have to take.

The changing facilities in a gym are located in a room which is only accessed by stairs. The service provider suggests to disabled users of the gym with mobility impairments that they can change in a corner of the gym itself. This is unlikely to be a reasonable alternative method of making the service available, since it may significantly infringe their dignity.

PROTECTING THE NATURE OF A BUSINESS OR SERVICE

4.28 The 2006 Act does not require a service provider to take any steps which would fundamentally alter the nature of its service, trade, profession or business. This means that a service provider does not have to comply with a duty to make reasonable adjustments in a way which would so alter the nature of its business that the service provider would effectively be providing a completely different kind of service.

A restaurant refuses to deliver a meal to the home of a disabled person with significant agoraphobia (a fear of public or open spaces) on the ground that this would result in the provision of a different kind of service. This is unlikely to be against the law. However, if the restaurant already provides a home delivery service, it is likely to be discriminatory to refuse to serve the disabled person in this way.

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.

A hair and beauty salon provides appointments to clients at its premises in a town centre. A disabled person with a respiratory impairment is unable to travel into town because this exacerbates their disability. The person asks the salon to provide them with an appointment at home. The salon refuses as it does not provide a home appointment service to any of its clients. This is likely to be within the law.

4.29 However, there might be an alternative reasonable adjustment which would ensure the accessibility of the services. If this can be provided without fundamentally altering the nature of the services or business, it would be a reasonable step for the service provider to have to take.

This briefing note and the information within is for guidance only and does not impose any legal obligations in itself, nor is it an authoritative statement of the law. It is not intended to be a substitute for a full review of the Code of Practice – Rights of Access, Goods, Facilities, Services and Premises (GD 2016/25) or the Disability Discrimination Act 2006.