This section outlines the Disability Discrimination Act (DDA), which first became law in November 1995. The DDA protects disabled people from discrimination in employment, access to goods and services, education and using transport. This section also describes how the DDA has changed over time and explains the role of the Equality and Human Rights Commission.

At the end of this section you will:

- Understand the definition of disability under the DDA
- Understand the different parts of the DDA and how it relates to employment, careers services, and post-16 education
- Have read about some of the cases that have been taken under the DDA
- Have applied your knowledge to case study examples
SECTION TWO
THE DISABILITY DISCRIMINATION ACT

Contents
2.1 Introduction 30
2.2 DDA Part 1: Definition of disability 30
2.3 DDA Part 2: Employment and occupation 32
2.4 DDA Part 3: Access to goods, facilities and services 41
2.5 DDA Part 4: Education 46
2.6 DDA Part 5: Transport 53
2.7 DDA Part 7: Supplemental 54
2.8 The Disability Equality Duty 55
2.9 The role of the Equality and Human Rights Commission 56
2.10 DDA timeline 57
2.11 Useful resources 58
2.1 Introduction

The Disability Discrimination Act 1995 (DDA) became law in November 1995. The legislation is designed to protect disabled people from discrimination in employment, access to goods and services, education, and using transport. There are five main sections of the DDA and a supplementary section covering victimisation against anyone who tries to make a claim under the Act:

- Part 1: Definition of disability
- Part 2: Employment and occupation
- Part 3: Goods, facilities and services (including careers services)
- Part 4: Education
- Part 5: Transport
- Part 7: Supplemental

The DDA was substantially amended by the Special Educational Needs and Disability Act 2001, the DDA Amendment Regulations 2003 and the Disability Discrimination Act 2005, which introduced the Disability Equality Duty. There is a timeline showing the implementation of the different parts of the Act on page 57.

2.2 DDA Part 1: Definition of disability

Although there is a definition of disability included in the DDA, it is important to remember that whether or not someone is disabled is often a question of degree – for example most people’s sight deteriorates as they get older, but this does not necessarily mean that they will refer to themselves as having a visual impairment. Similarly, many people have difficulty with certain types of learning, but this will not always mean that they have a learning difficulty.

The Disability Discrimination Act 1995 (DDA) describes a disabled person as anyone with a physical or mental impairment, which has a substantial and long-term adverse effect upon their ability to carry out normal day-to-day activities.

This is intended to be a fairly wide definition, as the same type of impairment will affect different people in many different ways. For example, someone with dyslexia may have difficulties in reading and writing and another person may have more difficulties with short-term memory.

A person does not have to be registered as disabled to be protected by the DDA. The registration process was abolished when the DDA was brought in.
People with **physical impairments** are not just wheelchair users or those with mobility difficulties. They are also people who have sensory impairments, such as those affecting sight or hearing, and medical conditions.

The term **mental impairment** as it is used in the Act, is intended to cover a wide range of impairments relating to mental functioning, including learning disabilities and mental health difficulties.

**What is a substantial and long-term adverse effect?**
A substantial effect is one which is more than minor or trivial and goes beyond the normal differences between people.

A long-term effect is one which has lasted, or is likely to last, at least 12 months, or for the rest of the person’s life. Effects which are not long-term include the loss of mobility due to a broken limb or effects of temporary infections.

A long-term effect will be treated as continuing if it ceases to be substantial but remains, or is likely to recur beyond 12 months – for example, a person with rheumatoid arthritis who has a period of remission.

**Effect of treatment**
Someone may be receiving medical or other treatment that alleviates or removes the effect but not the impairment – for example someone with epilepsy may be taking medication to control their seizures. In these cases, the treatment is ignored and the person would still be covered by the Act as they still have an impairment. The sole exception to this is wearing glasses or contact lenses.

**What is a normal day-to-day activity?**
These are activities which are carried out by most people on a fairly regular and frequent basis and are broadly defined as:

- **Mobility**
- **Manual dexterity**
- **Physical co-ordination**
- **Continence**
- **Ability to lift, carry or otherwise move everyday objects**
- **Speech, hearing or eyesight**
- **Memory or ability to concentrate, learn or understand**
- **Perception of the risk of physical danger.**
People whose condition is going to get worse over time

Progressive conditions are conditions that are likely to change and develop over time. People with progressive conditions are protected by the DDA from the moment the condition leads to an impairment with some effect on their normal day-to-day activities. However, people with the specific conditions of cancer, multiple sclerosis (MS) and HIV infection are covered from the point of diagnosis. This is to counteract the discrimination that people can face, even without any symptoms, in education, employment and the use of goods and services.

People who have recovered

People who have been disabled within the definition are protected from discrimination even if they have since recovered.

Activity: types of disability

Which types of disability do you think occur most frequently amongst people in the UK? Try putting the list below in the order of frequency in the adult population.

- Hearing loss
- Communication difficulties
- Difficulty walking
- Visual impairment
- Dexterity difficulties
- Emotional and behavioural difficulties
- Personal care needs
- Learning difficulties

2.3 DDA Part 2: Employment and occupation

What does the DDA Part 2 cover?

The DDA Part 2 covers all employers, regardless of the number of employees. All employment and occupation is covered, including contract workers and students undertaking a vocational work placement, i.e. one that is related to their course of study. The one remaining exempt area of employment is the armed forces.

The DDA Part 2 also covers trade organisations and qualifications bodies that regulate entry into particular professions or trades.

1 ‘One in four of us: the experience of disability’, The Disability Partnership

Answers: difficulty walking, hearing loss, personal care needs, dexterity difficulties, visual impairment, learning difficulty, emotional and behavioural difficulties, communication difficulties
What must employers do?
Employers must ensure that disabled employees and applicants are not discriminated against and that reasonable adjustments are made to work practices and procedures where necessary. The DDA Part 2 also specifically covers harassment and gives rights to people who have been victimised. Discrimination is prohibited in all areas of employment activity, including:

- Advertising a vacancy
- Arrangements for recruitment and retention
- Promotions and transfers
- Training and development
- Working conditions
- Employee benefits, for example, healthcares, pension schemes, bonuses
- The dismissal process

There are four types of discrimination under Part 2:

(i) Direct discrimination
Direct discrimination happens when an employer treats someone less favourably simply because they are disabled.

Example
A deaf person applies for a job as a nursery assistant, and the employer assumes they will not be able to do the job because they will not be able to communicate with children. This is direct discrimination.

(ii) Disability-related discrimination
Disabled-related discrimination under Part 2 occurs where an employer treats someone less favourably for a reason related to their impairment or condition.

Example
A disabled man is dismissed for taking six months’ sick leave as a result of a severe, long-term mental health condition. The employer’s policy, which has been applied equally to all staff (whether disabled or not) is to dismiss all employees who have taken this amount of sick leave. This is likely to be disability-related discrimination as the reason for his dismissal is related to his impairment and therefore this should be taken into account when applying the dismissal policy.
(iii) Failure to make reasonable adjustments

Employers have a duty to make reasonable adjustments to the workplace, working practices and to job descriptions when required. This duty arises where disabled people are placed at a substantial disadvantage compared to non-disabled people.

Failing to make reasonable adjustments is a form of discrimination under Part 2 of the Act.

Adjustments made by employers could include providing specialist equipment, altering hours of work if a disability makes it difficult to travel at busy times, or adjusting the physical premises of the workplace. It may also be appropriate to allocate specific duties to another person, allowing time off for rehabilitation, assessment or treatment, or providing materials in alternative formats.

Employers are only asked to make adjustments that are ‘reasonable’, and although there is no actual definition of reasonable (it will be tested and determined by case law as people take discrimination cases to the courts), the Code of Practice, which accompanies the law, says that it can depend on:

- The effectiveness of the adjustment (ie does it actually help the person to do their job?)
- Practicality
- Costs incurred and potential disruption
- The extent of the employer’s financial or other resources
- The availability of financial or other assistance
- Health and safety requirements, eg if the adjustment significantly increases the risks to the health and safety of another person

For work placements, reasonableness may additionally depend on the length of the placement.

Many employers wrongly assume that employing a disabled person will be expensive. Government research has shown that almost half of all adjustments cost less than £50, (many of them having no financial costs at all) and the majority (95 %) cost less than £5000. The most likely adjustments to be required by most disabled people are in terms of flexibility and understanding.

For reasonable adjustments that are costly, Access to Work funding may be available. Access to Work is a scheme run by Jobcentre Plus, which pays for any additional costs associated with employing disabled people. The scheme can pay for the full cost of
adjustments for applicants or new members of staff, and can contribute up to 80% of costs over £300 for existing members of staff.

 Employers should contact their local Jobcentre Plus for more information about Access to Work.

 Disabled employees and their employers will need to talk to an Access to Work adviser about the support, and then have an assessment of their needs in the workplace. Sometimes this can be done over the telephone, but it often involves a visit.

 The Access to Work scheme does not negate an employer’s responsibility under the Act, or any responsibility to make reasonable adjustments. Employers maintain responsibility for putting adjustments in place and making cost-free or low-cost adjustments such as flexible working hours or allocating certain tasks to other staff.

 Example
 An employee with ME needs to have rest periods during the day. This is refused, despite the employee working the full number of hours and completing the work that is required. This may amount to discrimination under the Act.

 (iv) Victimisation
 Victimisation is a special form of discrimination that is unlawful under the Act, and can apply to both disabled and non-disabled people.

 Other unlawful acts under Part 2
 In addition to discrimination, the Act also makes it unlawful for employers to carry out other acts, including harassment and instructions and pressure to discriminate. The Act does not give individual disabled people the right to take legal action following unlawful instructions or pressure to discriminate. Legal action may only be taken by the Equality and Human Rights Commission (EHRC).
SECTION TWO
THE DISABILITY DISCRIMINATION ACT

Activity: questions

A person with a history of depression is offered employment with a six-month probationary period, which is longer than the usual probationary period of three months.

Is this likely to be lawful?

A company advertises job vacancies on its website. However, the website is not accessible and a prospective candidate asks for the relevant information and application forms to be sent to him by email. The company says that its policy is to only have the information on the website.

Is this likely to be lawful?²

Action: contacts

Write down the name and contact details of your local Jobcentre Plus and Disability Employment Adviser.

Work placements

Students, who undertake vocational work placements as an integral part of a course, whether paid or unpaid, are also protected by the DDA Part 2. This is different to general volunteering and to undertaking a general period of unpaid work experience to increase employment prospects, which are not covered by the DDA. Work placement providers have the same duties under Part 2 to those on placement as they do for their own employees and it is unlawful for placement providers to discriminate against disabled people in:

- Selecting work placement candidates
- The terms of the placement
- Dismissal

² Answers: no, no; these examples would both represent less favourable treatment in recruitment.
SECTION TWO
THE DISABILITY DISCRIMINATION ACT

Activity: questions

A visually impaired student applies for a work placement in a restaurant kitchen as part of her NVQ Catering. The kitchen staff refuse to take the student, saying that a person who can’t see shouldn’t be allowed to work in a kitchen.

Is this likely to be lawful?

A student with a physical disability is offered a work placement in a bank. However, he is only offered the placement part-time, rather than full-time as for other students. The bank say this is because they think he will get tired easily, even though the student hasn’t mentioned this.

Is this discriminatory?

Action: reading

Read Skill’s guide, Into Work Experience, provided to careers services.

Placement providers must also make reasonable adjustments, although in addition to the factors determining reasonableness listed above, the length of a placement and the extent of the adjustment required may also be a consideration. Education providers also have a duty towards students undertaking work placements, which is covered under Part 4 (page 46).

Trade organisations and qualifications bodies

Trade organisations are organisations of workers or of employers whose members carry on a particular profession or trade for the purposes of which the organisation exists. For example, they are bodies such as the Institute of Carpenters, the Law Society, and the Royal College of Nursing. Trade organisations must not discriminate in the arrangements for becoming a member, the terms of membership or the benefits offered to members. Qualifications bodies confer, renew or register qualifications needed for a particular profession or trade, such as the General Medical Council, the Council for Registered Gas Installers (CORGI), the Law Society and the General Social Care Council.

Both qualifications bodies and trade organisations must not discriminate against disabled people in conferring qualifications or in registration for a profession, and are required to make reasonable adjustments. They are not expected to change their professional standards (called competence standards), but they must ensure that these standards are objectively justifiable, ie they are clearly defined. Try to ensure people

3 Example answers: no, yes – as work placements are covered by the DDA, students should not be discriminated against and both of these examples reflect less favourable treatment
feel relaxed, as new and stressful situations can increase muscular tension and decrease people’s dexterity and are a distinct requirement for that trade or profession. Competence standards also apply to post-16 institutions under the DDA Part 4. Refer to page 53 for more details on competence standards.

**Example**
An appropriate competence standard for an electrician might be to have good colour vision, in order to be able to distinguish between coloured wires. This should not lead to assumptions being made about any person with a visual impairment not being able to qualify.

**Example**
You may think that the standard to be a nurse might be ‘being able to listen’ to patients, which could actually be impossible for a Deaf person. However, the standard really is ‘being able to communicate effectively’ with patients, which is possible for a Deaf person.

Although changes to the actual standards are not required under the DDA, it may be necessary to make reasonable adjustments to the way that a standard is assessed. For example, someone with Repetitive Strain Injury may be allowed to use speech-to-text software rather than word processing to achieve the competence standard for a business administration qualification.

### Activity: qualification bodies and competence standards

<table>
<thead>
<tr>
<th>Profession</th>
<th>Qualifications body</th>
<th>Competence standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nursing</td>
<td>Nursing and Midwifery Council</td>
<td>Literacy and numeracy Good health and good Character</td>
</tr>
<tr>
<td>Teaching</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Law</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

What happens if someone feels they have been discriminated against?
If someone feels discriminated against by their employer, work placement provider, trade or qualifications body, possible action could include:
Having an informal discussion with the employer about their needs and what the employer could reasonably provide for them

Making a complaint about what has happened through the organisation’s grievance procedure

Following the ‘questions procedure’ (this involves asking an employer to reply to and comment on a questionnaire which sets out the reasons why someone feels discriminated against. This can help decide whether to take a complaint to an employment tribunal)

Making a complaint to an employment tribunal

Useful organisations to contact are the Equality and Human Rights Commission, Citizens Advice Bureaux, the Advisory, Conciliation and Arbitration Service (ACAS), or the Employment Tribunal Service.

Karen
Karen is a part-time teacher in the history department of a sixth form college. Two years ago she experienced a nervous breakdown, and took almost a year off work. During that time her colleagues covered for her, taking on her classes and supervising her students. They were happy to do this at first although it put severe pressure on their workload.

When Karen first returned to work her attendance was erratic, and in particular she was often late for her 9 o'clock class on Tuesdays, Thursdays and Fridays. She explained to her colleagues that her medication made her very groggy at this time of day. However, some colleagues pointed out that they had carried her long enough, and it was time for her to ‘pull her weight’.

Karen has now fully recovered, and is no longer on medication. She is working as before and carrying her full teaching load. She is considering applying for a more senior
post which is likely to become vacant when one of her colleagues takes early retirement at the end of the year. Members of the board responsible for the appointment have been heard to say that they would not consider giving the post to an ‘unreliable hysterical woman’.

Is Karen’s condition covered by the DDA?

What adjustments might be ‘reasonable’ for Karen?

Is promotion covered by the DDA? Would this be considered discrimination?

Bridget

Bridget is 20 and is doing an NVQ Level 2 course in hairdressing at her local college. Students start by learning the theory and practising techniques at college, before moving on to do a number of work placements. Bridget has Asperger's syndrome, which means that she can be very sensitive to changes in routine and has an obsession with hairstyles. Staff at the college are aware of Bridget’s needs and make adjustments for her, such as ensuring a strict routine and giving her plenty of warning of changes to routine, such as exam periods or holidays. Bridget also has a mentor, whom she meets regularly.

In the second term, students go on two placements. The first of Bridget’s placements, in a small local salon, goes very well, and both staff and customers enjoy talking to her about the latest fashion trends in hairstyles. However the second placement is in a larger salon, and staff are required to work different shifts and with different people. Bridget finds this very difficult and has become very distressed, reacting badly to things that happen at the placement or sometimes not turning up at all. The salon phoned the college to say that Bridget was ‘mad’ and should not be allowed to be a hairdresser.

Bridget has now visited your service to find out what her career options are.

Is Bridget disabled?

Could the college and work placements have been better prepared for Bridget’s placement?

What adjustments could have been made on the placement?

Would Bridget be able to be a hairdresser?
Cases taken under the DDA Part 2
The following are examples of cases that the Disability Rights Commission (DRC) took under the DDA Part 2 and outline some of the issues that disabled people are facing in the areas of employment and occupation. There are further details of other cases available in the archives section of the old DRC website, http://83.137.212.42/sitearchive/DRC/the_law/drc_legal_cases/part_ii_employment.html

- **Offer of employment withdrawn from lady with epilepsy**
A lady was offered a job as an administrative assistant, following interview. After a start date had been agreed, she was asked for further information about her health. She explained that she had had Grand Mal epilepsy since childhood until she underwent temporal lobe surgery in 1996. Since then she had been free of symptoms and, latterly, of medication. Within a matter of days, she was advised that the vacancy was no longer available because there had been a sudden decrease in business.

The case was settled for the sum of £4000.

- **Less favourable treatment/lack of reasonable adjustments in recruitment**
A man with a severe hearing impairment was interviewed for a post as a Medical Records Clerk working within an NHS Trust. He was informed that he had failed to get the job because he was not able to take incoming telephone calls due to his impairment. However, out of a job description outlining 15 separate duties and responsibilities only one related to the answering of telephone calls.

The Employment Tribunal found that the adjustment to the job duties could have been made without any great inconvenience or expense. He was awarded damages of £7436.

### 2.4 DDA Part 3: Access to goods, facilities and services

**What does DDA Part 3 cover?**
Service providers who offer any services or goods directly to the public, whether these are charged for, or provided free, are covered by Part 3 of the DDA. This includes, for example, shops, sports facilities and public parks, and also includes careers services. Work-based learning and wholly privately-run education institutions are also covered by Part 3.
What must service providers do?
Service providers must offer an equal service to disabled people as they do for non-disabled people. They must not:

- Refuse, or deliberately not provide, a service
- Give disabled people a lower standard of service (for example, being rude or making someone wait)
- Provide a service on worse terms (for example, charging more for the same service)

Activity: question

A careers service has a policy to see people within two weeks of them booking an appointment. However, when a visually impaired person tries to make an appointment, he is told that he will have to wait six weeks because the specialist adviser is on holiday.

Is this likely to be lawful?4

Service providers are also required to make reasonable adjustments.

What are reasonable adjustments?
If a service would be impossible or very difficult for a disabled person to use, service providers must make reasonable adjustments to enable access to the goods and services they offer. This could include:

- Changing practices, policies and procedures; for example allowing assistance dogs where there is normally a no dogs policy.
- Providing auxiliary aids and services; for example, providing a sign language interpreter or installing software on computers.
- Adjusting physical features, or providing alternative methods of making services available if physical features cannot be changed; for example, ensuring a one-stop shop for adult guidance is wheelchair accessible or providing an alternative venue.

Anticipatory duty
Service providers must think about the needs of disabled people in general, whether or not they know if a particular person has a disability. Service providers, including careers services, must also anticipate the needs of disabled people, being proactive in considering possible adjustments, rather than just reacting to needs on an ad-hoc basis.

---

4 This could be considered a lower standard of service, as the disabled person has to wait longer.
Anticipatory adjustments to consider could include:

- **Reserving parking for disabled people**
- **Widening doorways**
- **Improving signage**
- **Developing links with a local interpreter service, so that interpreters can be called in if necessary**
- **Providing materials in alternative formats, or having an arrangement with a local printer whereby they can be produced quickly when necessary**
- **Ensuring your website meets accessibility standards**

**Activity: anticipatory adjustments**

What anticipatory adjustments do you/your service make?

Write down three things that you or your service could do to better anticipate the needs of disabled people.

1.
2.
3.

However, there will always be times where individual adjustments will be needed to meet disabled people’s specific needs.

**Example**

A service provider ensured that its information was available in a variety of alternative formats, including disk, large print (size 16 font), and had an arrangement with a local transcription service to Braille documents when necessary. One person needed information in size 20 font, so they adjusted the document electronically and printed the information in this preferred format.

**What is reasonable?**

Service providers are only expected to do what is reasonable, which will vary depending on:

- **The type of service being provided (for example, how important is the service? Is it available elsewhere?)**
- **The nature of the service provider, its size and resources**
- **The effect of the disability on the individual**
Service providers can also consider the effectiveness and practicality of the adjustment, financial and other costs involved, potential disruption and the amount of resources already spent on making adjustments when deciding whether a particular adjustment is reasonable or not.

**Can a service provider ever justify treating a disabled person less favourably?**

There are limited circumstances when less favourable treatment may be justified such as:

- *When health and safety would be genuinely endangered – this should not lead to spurious use of health and safety justifications*
- *When the service provider would be prevented from offering the service to others by providing a service to the disabled person – this is unlikely to happen in the case of careers services*

**What happens if someone feels they have been discriminated against?**

If someone feels they have been discriminated against and the situation is not resolved easily, they can contact the Equality and Human Rights Commission, who can offer advice, and who also run a conciliation service for complaints under Part 3 (the Disability Conciliation Service). Conciliation is only available if both parties agree to it.

If conciliation still does not produce an acceptable outcome, the disabled person can also take the service provider to a county court. Action must be brought within six months of the alleged discrimination.

**Activity: case study**

After reading the information about the DDA Part 3, look at the case study below, which relates to the provision of goods and services. There are questions at the end of the case study to test your knowledge of the DDA and the responsibilities of different bodies. You may also want to think about what kind of support could have been offered and how you would have advised the person if they had approached you for advice.

There are suggested answers on page 62, which will provide some pointers.

**John**

John is Deaf and uses British Sign Language as his main form of communication, although he can lip-read for short periods of time. John wants to move from his current role as an administrator and would ideally like to move into office management. When
he visits his local careers centre, they are very nice but rather shocked that a Deaf person has turned up on their doorstep. He explains that he had tried to make an appointment, but that no-one answered the textphone.

John makes an appointment to see a careers adviser to discuss his options. The careers centre knows he needs a BSL interpreter, so try a couple of local agencies, but no-one is available. They explain this to John, and agree to go ahead with the appointment and rely on lip-reading. However John gets tired quickly and does not get the full amount of time with the careers adviser. The careers centre is very busy and he is unable to make another appointment until a month’s time.

What procedures should the careers centre have had in place?

Was John treated less favourably in the careers interview?

Could any further reasonable adjustments have been made?

Cases taken under the DDA Part 3
The following are cases that the DRC took under the DDA Part 3 and outline some of the difficulties that disabled people are experiencing in the provision of goods and services. There are further details and other cases in the archives section of the old DRC website, http://83.137.212.42/sitearchive/DRC/the_law/drc_legal_cases/part_iii_goods_and_services.html

- **Access to sports facilities such as rugby/football grounds**
  A wheelchair user took a case of unfavourable treatment against a rugby ground. The Rugby Union’s rules state that a disabled person must be accompanied by a non-disabled person which meant that he had to purchase two tickets for each game, incurring additional cost even though the ticket for a companion was at a reduced rate. In addition, disabled seating was prioritised for those who had a disability as a result of playing rugby.

  The rugby ground owners agreed to change their ticketing practices and to re-design their forms. They are also developing new policies and will provide disability equality training for all staff.
• **Access to bar and restaurant services**
A lady with learning difficulties was refused service in a pub and then asked to leave the premises for reasons relating to her disability. The DRC was also made aware of other individuals who experienced similar discrimination for reasons relating to their disability whilst frequenting the same pub. It appeared this particular service provider had been persistently discriminating against customers with learning difficulties. The lady was awarded £3000 in damages for injury to feelings and costs of £14,000 were also awarded against the defendants.

• **Provision of alternative formats**
A visually impaired person required documents in large font size print. He contacted a charity on two occasions asking for forms to be sent to him in large print and was told this was not possible. As a result he was unable to use the services of the charity which had implications for his future career. The claim was settled on payment by the charity of £1500, an apology and an agreement to amend its policies to improve access to its services for all disabled people.

2.5 **DDA Part 4: Education**

**What does DDA Part 4 cover?**
The DDA was substantially amended in 2001 by the Special Educational Needs and Disability Act (SENDA), which became Part 4 of the DDA and was implemented from September 2002.

The DDA Part 4 covers all schools, post-16 publicly-funded education providers, and local authorities (LAs) providing further or adult education and statutory youth services. Since 2007, general qualification awarding bodies, for example, those which award qualifications such as GCSEs, A levels, Standard Grades and the Welsh Baccalaureate are also covered by the DDA Part 4.

This section covers only those education providers in the post-16 sectors and general qualification bodies.

**What must education providers do?**
It is unlawful for an education provider to discriminate against a disabled person in:

- **Admissions, enrolments or exclusions**
- **The terms on which admission or enrolments are made**
- **The provision of student services**
Activity: student services

In the DDA, the term student services is taken to mean anything and everything that is provided wholly or mainly for students, from teaching to leisure facilities.

Make a list of at least ten things which might be considered as student services under the DDA Part 4. See page 60 for answers.

1. 6.
2. 7.
3. 8.
4. 9.
5. 10.

There are four types of discrimination under the post-16 sections of the DDA Part 4:

(i) Direct discrimination
Direct discrimination happens when an education provider treats someone less favourably on the grounds of their impairment or condition.

Example
A wheelchair user is not offered a place on an archaeology course because the education provider assumes that the wheelchair will cause an obstruction during practical work. Other applicants with the same qualifications but who are not wheelchair users were offered places. This is likely to amount to direct discrimination and is therefore unlawful.

(ii) Disability-related discrimination
Disability-related discrimination under Part 4 happens when an education provider treats someone less favourably for a reason related to their impairment or condition.

Example
An admissions tutor refuses to accept someone who is D/deaf on to an English course because she believes the applicant does not have clear enough speech to do the course. This is likely to amount to disability-related discrimination and is therefore unlawful.

This is the only form of discrimination which can be justified under Part 4, but only in extremely limited circumstances.

Disability-related discrimination could be justified in two situations:
Where the reason for the treatment is both material to the circumstances of the particular case (there is a reasonably strong connection between the reason for the treatment and circumstances of the case) and substantial (the reason must carry real weight and be of substance).

When it is the application of a competence standard. This is defined in the Act as ‘an academic, medical, or other standard applied by or on behalf of an education provider for the purpose of determining whether or not a person has a particular level of competence or ability’.

Where the application of a competence standard amounts to disability-related discrimination, this can be justified if the education provider can show that:

- The standard is or would be applied equally to people who do not have the person’s particular impairment; and
- Its application is a ‘proportionate means of achieving a legitimate aim’ (there is a pressing need to apply the standard, and there is no other way of doing that)

This means that course providers have to set competence standards in all areas, such as entry requirements, assessment requirements, and so on. These standards cannot be discriminatory and must be justifiable. For example, an education provider may not be able to insist that someone had a French GCSE for a history course, unless they could prove that French was an absolute requirement for this particular course.

(iii) Failure to make reasonable adjustments
Education providers must make reasonable adjustments to ensure that disabled people can access education and any related services. This duty arises where a provision applied by an education provider puts disabled people at a substantial disadvantage compared to non-disabled people. Failing to make reasonable adjustments is a form of discrimination under Part 4 of the Act.
Reasonable adjustments might include:

- Providing learning materials in alternative formats for a student with dyslexia
- Providing sign language interpreters or note takers in classes or careers interviews for a deaf student
- Ensuring a field trip or outing is accessible to a student with a medical condition
- Talking through the process of the examination in advance with a student with Asperger’s syndrome
- Providing a car parking space and adaptations to buildings to ensure easy access to someone who experiences fatigue
- Providing additional support to a student with a physical disability in the library and canteen
- Providing study skills support to a dyslexic student
- Extending essay or assignment deadlines for someone with a mental health difficulty
- Training staff to communicate appropriately with a hard of hearing student who lip-reads

Anticipatory duty

Like Part 3, the duty to make reasonable adjustments in education is anticipatory. This means that education providers must think ahead to the type of adjustments that may be required and, where feasible, put these adjustments in place. The anticipatory duty also means that education providers should be making adjustments for disabled people whether or not they know they are disabled.

Anticipatory adjustments might involve:

- Ensuring accessibility of courses is considered when they are being written or revised
- Building accessibility features into buildings at the design stage
- Ensuring e-learning materials are accessible to students with visual impairments
- Training staff to work with disabled people
- Employing a disability adviser to meet with students to determine what adjustments may be appropriate in individual cases

Only reasonable adjustments need to be made. What is reasonable in any particular instance will depend on all the individual circumstances of the case. Specific factors that education providers can consider are listed in the Code of Practice and include:
SECTION TWO
THE DISABILITY DISCRIMINATION ACT

- The need to maintain competence standards
- Financial resources available (to the whole institution)
- Any grants or loans available to the student (specifically Disabled Students’ Allowances in higher education)
- Cost of the adjustment
- Health and safety requirements (but should not be used spuriously)
- Relevant interest of other people including other students

Example
A sign language user wishes to use the careers service at a higher education institution. The institution says that funding for an interpreter must come from the careers service, but the careers service does not have sufficient budget to pay for an interpreter. The institution should take its entire budget into consideration, and perhaps move money between budgets, when deciding whether an adjustment is reasonable.

Example
A student with learning difficulties is doing a GCSE in Science. The student is struggling with the pace of the class. The tutor suggests that he have an assistant to help him keep up, but the student thinks that will draw attention to himself and so declines. He asks the tutor if he can go over material more slowly with the whole class. The tutor considers this, but realises that if they cover material more slowly, they would not be able to cover the entire syllabus before the end of the course. This would put other students at a substantial disadvantage.

In some cases a student may request that the existence or the nature of their disability be kept confidential. Education providers must comply with confidentiality requests unless there are overriding health and safety issues. A confidentiality request does not, however, mean that no adjustments need be made, although it may mean that different, or in some cases less ideal adjustments are put in place.

Education providers do not have to make reasonable adjustments when applying a competence standard. However, the duty does apply to the way the competence is assessed, such as providing large print exam papers to assess a student’s level of ability in French.

(iv) Victimisation
Victimisation is a special form of discrimination which is unlawful under the Act, and can apply to both disabled and non-disabled people.
Other unlawful acts under Part 4
In addition to discrimination, the Act also makes it unlawful for education providers to carry out other acts, including harassment and instructions and pressure to discriminate. The Act does not give individual disabled people the right to take legal action following unlawful instructions or pressure to discriminate. Legal action may only be taken by the EHRC.

Activity: case study
After reading the information about the DDA Part 4, look at the case study below, which relates to education. There are questions at the end of the case study to test your knowledge of the DDA and of the responsibilities of different bodies. You may also want to think about what kind of support could have been offered and how you would have advised the person if they had approached you for advice. There is a suggested answer on page 62, which will provide some pointers.

Mohammed
Mohammed works in a bank, but wishes to do a part-time course in economics, to improve his knowledge of the area. He visits you to discuss his options. You recommend that he attend a college open day.

He attends the college open day to find out more about provision, and informs them beforehand that he has mobility difficulties. He is also a slow reader, and suspects he may have dyslexia, although he has never been assessed for this. At the open day there is a lot of walking between buildings, and Mohammed has to miss some parts because he gets too tired.

Despite the difficulties, Mohammed decides to attend the course. He complains to the college about the difficulty he has walking between buildings, and the college loans him an electric wheelchair to get between different buildings. He is asked to pay 50% of the cost of this. Mohammed also asks for extended library loans, but the college says that is not possible and not reasonable.

When he gets his timetable, only half of classes are in accessible rooms. This is because of timetabling restrictions and also because the college is in an old building.

Was the college being discriminatory at the open day?
Should the college have allowed longer library loans?
What could the college do to improve access to buildings?

Cases taken under the DDA Part 4
The following are cases that the DRC took under the DDA Part 4 and outline some of the issues that disabled people are coming up against in post-16 education. There are further details of other cases in the archives section of the old DRC website, http://83.137.212.42/sitearchive/DRC/the_law/drc_legal_cases/part_iv_education.html

- **Wheelchair user denied a place at college**
  A 16-year-old wheelchair user was denied a place at his local sixth form college. He had chosen this college because it was close to his home and it offered the A level courses he wished to follow. He was able to access all the necessary facilities on the ground floor but unable to access IT facilities on the first floor. He therefore made arrangements to purchase a stair-climbing wheelchair to enable him to access the first floor. However the college refused to admit him on the grounds that as a wheelchair user he will present a health and safety risk to himself and other students.

  The court granted an injunction for the student, so that he could study at the college. The college decided to appeal, but agreed to settle the case as the Learning and Skills Council agreed to fund the cost of a temporary accessible classroom for all IT lessons until a lift was installed.

  This case reinforced the fact that health and safety should not be used as spurious reasons not to admit or make reasonable adjustments for a disabled student.

- **University refuses to make appropriate reasonable adjustments**
  A mature student at university with chronic Post Traumatic Stress Disorder, causing panic attacks and extreme distress, asked for self-contained on-campus accommodation which was not on the ground floor as he had previously lived in shared university accommodation which had exacerbated his condition. The university initially agreed to provide the accommodation but then offered unsuitable accommodation that was off-campus. The student missed a full year of his course as a result.

  The case was settled on the basis that he could return to the university in appropriate accommodation at a reduced rate for the remainder of his course (the reduced rate represented a saving of £9500). He was also paid £2500 for injury to feelings.
General qualifications bodies
From September 2007 the Disability Discrimination Act (DDA) was extended to cover general qualifications. These include GCSEs, AS levels and A levels, GNVQs, the Welsh Baccalaureate, the International Baccalaureate and National Qualifications in Scotland. This means that the bodies responsible for general qualifications, such as EdExcel and AQA, must not discriminate against disabled applicants.

These bodies also have a duty to make reasonable adjustments to ensure students are not disadvantaged for disability-related reasons, unless a competence standard applies.

For general qualifications the following examples should not normally be regarded as competence standards:
- Physically attending an exam at a particular place
- Attending a course over a certain period of time
- Hearing spoken words
- Writing neatly
- Doing a task within a set time limit (unless the time limit is the standard being measured, such as in a typing speed test)

General qualifications bodies do not have to make adjustments to competence standards, but must make adjustments to the way you meet the standard. For example, instead of a timed written exam a piece of coursework could be submitted.

The duty to make reasonable adjustments is anticipatory. This means that general qualifications bodies must think ahead to the type of adjustments that may be required and, where feasible, put these adjustments in place.

2.6 DDA Part 5: Transport

What does DDA Part 5 cover?
The DDA currently covers public transport services (for example, access to stations and ticket facilities), but not public transport vehicles. However, new regulations create standards that must be met by all new vehicles. These ensure that new public service vehicles, rail vehicles and newly licensed taxis have to be accessible to disabled people. The regulations also state that disabled people must be able to travel in safety and reasonable comfort. The dates of the introduction of these duties vary according to the type of vehicle:
SECTION TWO
THE DISABILITY DISCRIMINATION ACT

- **Taxis:** all new taxis should now be made accessible. All vehicles should meet the requirements by the year 2012.

- **Buses and coaches:** all new single-decker buses should now be accessible. All double-decker buses should now also be accessible. All vehicles will have to comply with the regulations at a later date.

- **Rail vehicles:** all new rail vehicles that have come into service after 31 December 1998 will have to comply with the regulations.

The end-date by which all transport must be accessible is 2020.

Transport was not previously covered by the Part 3 service provisions, but this exemption was removed by the new Disability Discrimination Act 2005. Transport operators will have to make reasonable adjustments to policies, practices and procedures that discriminate against disabled people and also to provide auxiliary aids and services where they enable or facilitate access.

**Improvements to rented accommodation**

This part of the DDA refers to new laws on improvements to rented accommodation. This could be a house, a part of a house, or a flat, for example. There are no specific duties under the DDA for landlords to carry out disability-related improvements to rented accommodation. However, this part of the Act gives tenants the right to apply for consent to do improvement works themselves.

### 2.7 DDA Part 7: Supplemental

**Victimisation**

This is a special form of discrimination which is unlawful under the DDA. This means that it is against the law for an education provider, employer or service provider to treat someone less favourably if they try to enforce their rights under the Act, such as if they take a case of discrimination against a college to court. It is also unlawful to treat less favourably anyone who helps to make a claim of discrimination – for example, someone who provides information or gives evidence for a student in a court or tribunal.

Unlike other forms of discrimination under the Act, claims of victimisation can be made by both disabled and non-disabled people.

**Example**

A disabled student supported by the Disability Adviser brings a case of discrimination against a college. This is because, despite a number of requests, the college has failed...
to provide support workers and note takers for that student. Later, the Disability Adviser receives a negative annual review in retaliation, and a performance pay award which all other staff members got is withheld. This is victimisation and likely to be unlawful.

2.8 The Disability Equality Duty

Since 2006, all public authorities have had to meet a Disability Equality Duty (DED), similar to the race equality duty in the Race Relations (Amendment) Act 2000.

All public bodies, including education providers and their funding bodies, have a general duty to:

- eliminate disability discrimination
- promote equality of opportunity for disabled people
- eliminate harassment
- take account of people’s disabilities even if this means treating disabled people more favourably
- promote positive attitudes towards disabled people
- encourage participation by disabled people in public life.

When making decisions or developing policy, public bodies must take into account the needs of disabled people.

Some public authorities also have a specific duty. This includes all education providers and funding bodies, such as the Learning and Skills Council (LSC) and Higher Education Funding Council for England (HEFCE). They have to produce a Disability Equality Scheme on a three-yearly basis with an action plan showing how they intend to meet the DED.

Disabled people who are employed by or who use the services provided by the public authority should be actively involved in drawing up the Disability Equality Scheme. For educational institutions this means consulting all staff, current students, prospective students, applicants and those who have dropped out. Schemes must show:

- the impact they will have on disabled people
- how they will be monitored, and
- how disabled people have been involved.

A code of practice is available on the Disability Equality Duty.
2.9 The role of the Equality and Human Rights Commission ( EHRC)

In 2007, the Disability Rights Commission (DRC) merged with the Commission for Racial Equality and the Equal Opportunities Commission to become one body - the Equality and Human Rights Commission (EHRC). At the same time, the EHRC took on responsibility for equality in age, religion and belief, and sexual orientation.

The DRC, which it replaced, was originally set up to:
- promote equal opportunities for disabled people accessing services
- keep the Disability Discrimination Act under review
- give assistance and support to disabled people taking legal action
- provide information and advice to anyone with rights or duties under the Act
- carry out formal investigations
- prepare new or revised codes of practice
- arrange independent conciliation of legal disputes.

The EHRC now carries on this work and runs a helpline for disabled people giving information and guidance on discrimination and human rights issues. It can also provide casework support where people have been discriminated against. In some circumstances the EHRC will take legal cases on behalf of individuals.

The EHRC can be contacted via:
www.equalityhumanrights.com

EHRC Disability Helpline – England
Tel: 08457 622 633   Textphone: 08457 622 644
Fax: 08457 778 878
Open Mon, Tue, Thu, Fri 9am–5pm; Wed 8am–8pm

Wales
Tel: 0845 604 8810   Textphone: 0845 604 8820
Fax: 0845 604 8830
Email: waleshelpline@equalityhumanrights.com
Open Monday to Friday 9am–5pm

Scotland
Tel: 0845 604 5510   Textphone: 0845 604 5520
Fax: 0845 604 5530
Email: scotlandhelpline@equalityhumanrights.com
Open Monday to Friday 9am–5pm
2.10 Disability Discrimination Act timeline

- November 1995: DDA passed; education exempt
- October 1995: Disability Rights Commission established
- December 1996: Parts of the DDA come into force
- April 2000: Disability Rights Commission established
- 2001: Part 4: Special Educational Needs and Disability Act (SENDA) passed
- October 2004: Part 2 – qualification bodies and work placements covered, and small employers exemption removed
- September 2002: Part 4: main implementation
- October 2004: Part 3: Reasonable adjustments to physical features
- December 2005: Part 1: Changes to definition of disability for those with mental health problems, cancer, MS and HIV
- December 2006: Disability Equality Duty for public authorities introduced
- 2007: Commission for Equality and Human Rights established; Part 4: General examination bodies covered
- September 2003: Part 4: auxiliary aids and services required
- September 2005: Part 4: physical access requirements
- 2007: Commission for Equality and Human Rights established; Part 4: General examination bodies covered
2.11 Useful resources

Part 1: Definition
DDA: General
*The Disability Discrimination Act 1995.*
Copies of the Act are available from The Stationery Office.

*The definition of disability*, available from The Stationery Office.

Part 2: Employment

*Code of Practice: Employment and Occupation*
*Revised Draft Code of Practice: Trade Organisations, Qualifications Bodies and General Qualifications Bodies.*
Available from The Stationery Office.


Part 3: Provision of goods, facilities and services
*Code of Practice (Revised) – rights of access: services to the public, public authority functions, private clubs and premises*
Available from The Stationery Office.

Part 4: Education
*Code of Practice (Revised) for providers of post-16 education and related services.*

*DDA 1995 (as amended by the Special Educational Needs and Disability Act 2001).*
Available from The Stationery Office. (Priced publication)


SECTION TWO
THE DISABILITY DISCRIMINATION ACT

Part 5: Public Transport
The Disability Discrimination Act general booklets, including one covering public transport, available from the CEHR.


The Disability Equality Duty

The Duty to Promote Disability Equality – Statutory Code of Practice, Scotland.
Both available from The Stationery Office.

All Codes of Practice and the resources below can be downloaded for free from the archived Disability Rights Commission website. This is held on the EHRC website at www.equalityhumanrights.com/en/aboutus/whoweare/history/pages/oldsitelinks.aspx. Select ‘Disability Rights Commission sites’ then ‘DRC-GB (main site)’.

Resources from the former Disability Rights Commission
Understanding the Disability Discrimination Act: A guide for colleges, universities and adult community learning providers in Great Britain

Challenging Disability Discrimination – A guide to services offered by the Disability Rights Commission

A Guide for Disabled Students and Learners

Disability Conciliation Service – a brief guide to the DRC conciliation service

Good Practice Guides: A series of 11 good practice guides on the DDA Part 4, aimed at different groups of higher education staff, including Marketing and Admissions, Examinations and Assessments, Careers Services and Estates staff.

Disability Discrimination Act booklets: a number of individual booklets covering topics such as: employment, service provision and education.
Answers to student services action point on page 47

Student services might include

- teaching: classes, lectures, seminars, practical sessions
- curriculum design
- examinations and assessments
- field trips and outdoor education
- arranging study abroad or work placements
- research degrees and research facilities
- informal/optimal study skill sessions; short courses; day or evening adult education courses
- training courses
- distance and e-learning
- classrooms, lecture theatres, laboratories, studios, darkrooms
- laboratory equipment, computer facilities, class handouts etc
- libraries, learning and information centres
- information and communication technology and resources placement finding services
- careers advice and training, careers libraries
- job references
- job shops and employment finding services
- graduation and certificate ceremonies
- leisure, recreation, entertainment and sports facilities
- the physical environment
- car parking
- chaplaincies and prayer areas
- health, counselling, financial advice and welfare services
- catering facilities
- childcare facilities
- campus or college shops and residential accommodation
- accommodation finding services
Answers to case studies

Karen

Is Karen’s condition covered by the DDA?
Yes, mental health conditions are covered by the DDA and discrimination on based on having a disability in the past is also covered.

What adjustments might be ‘reasonable’ for Karen?
Possibilities might include:
• Giving morning classes to other teachers and making up time or taking on tasks in another area
• Reducing working hours

Is promotion covered by the DDA? Would this be considered discrimination?
Promotion is covered by the DDA. Treating a person with a disability less favourably during promotion or selection procedures because of their disability would fall under the DDA. This situation could be considered discriminatory as the only reason against the promotion is related to her condition.

Bridget

Is Bridget disabled?
Bridget needs to be assessed to determine whether she has Asperger’s syndrome. Asperger’s syndrome is likely to be covered by the DDA.

Could the college and work placements have been better prepared for Bridget’s placement?
The setting up of work placements by education providers is covered by the DDA. The college should have explored whether these were appropriate placements for Bridget and that they could meet her needs. The college did know about Bridget’s disability and should have done more to liaise with the placement provider.

The work placement provider also has responsibilities under the DDA and should have clearly explained the systems and procedures at the salon to Bridget. They should have asked Bridget what her needs were and how they could help to meet them, or alternatively have liaised with the college to give appropriate support.
What adjustments could have been made on the placement?
Did Bridget have a supervisor or colleague that worked similar hours and/or to whom she could express any concerns? It may have been useful for her to have a named contact at the salon.

Bridget could have been allowed to work the same shift each day and to work in the same part of the salon, for example.

Would Bridget be able to be a hairdresser?
If she completes her course there is no reason why she could not be a hairdresser. She would need to look at which work environment would best suit her needs and what kind of support she would need.

John

What procedures should the careers centre have had in place for deaf clients?
They need to ensure that they have good communication with deaf clients. To do this it is important to have someone trained to use the textphone and enable other forms of contact such as email. They should also have a working relationship with an interpreter service so that signers can be organised effectively. There should also be flexibility in the length of time appointments take so that people with communication difficulties can take the time they need. They should also have access to a careers adviser for people with disabilities.

Was John treated less favourably in the careers interview?
On the day John was treated less favourably compared to other people, as the service was unable to provide the means through which John could gain full benefit from his time. Other issues that need to be considered are whether or not the service did have someone trained in using the textphone? Would others making an appointment that day have to wait a month for an appointment?

Could any further reasonable adjustments have been made?
Other ideas would have included an email service to book appointments and ensuring that staff receive deaf awareness training.

Mohammed

Was the college being discriminatory at the open day?
Yes – the college was aware of his disability beforehand and should have made appropriate adjustments and support arrangements. In general, they should anticipate
the possibility of people with a wide range of disabilities coming to the day and ensuring that it is accessible to everyone. Not knowing that an individual has a disability prior to the day is not a reasonable justification.

**Should the college have allowed longer library loans?**
Longer library loans are often considered to be a reasonable adjustment for people with disabilities, particularly for those who may take longer to read. Some questions to ask are:
Do people with diagnosed dyslexia receive extended loans? If not, why not? Will the college arrange for Mohammed to have an assessment for dyslexia?

**What could the college do to improve access to buildings?**
The college should carry out an access audit to look at all the facilities in the college and identify how access could be improved. The college should establish whether or not improvements are reasonable when considering health and safety and disruption of service.

One way to improve access is to use the refurbishment of new buildings as an opportunity to improve access. They could also look at policy and procedures which prevent accessibility, for example, changing timetabling policy to ensure that accessible lecture theatres are available when disabled students need them.