

## A guide for managers of work-based learning provision

The Disability Discrimination Act (DDA) received Royal Assent in 1995. It came into force in December 1996 and covers Employment (Part 2) and Access to Goods, Facilities and Services (Part 3). Since then there have been a number of amendments, the major change being the inclusion of Education (Part 4) which was introduced in September 2002. Work-based learning providers' duties are covered by Part 3 of the DDA (Goods, Facilities and Services), except university, college or school providers of work-based learning who are covered by Part 4 and education authorities securing further education who are also covered by Part 4.

### Who has rights under the DDA?

Disabled people have rights under the DDA if they have a recognised mental or physical impairment which has a long term and substantial, adverse effect on their ability to carry out normal day-to-day activities.

All the major areas of disability – physical disability, sensory disability (such as deafness and blindness), mental health difficulties, dyslexia, learning difficulty and a wide range of medical conditions are capable of being included within this definition if they have a long term, substantial, adverse effect on normal day-to-day activities.

### What duties do providers have under the DDA?

There are slight variations between the three parts of the DDA but in general providers have duties:

- not to discriminate against a disabled person by treating them less favourably than other people, for a reason related to their disability  
and also to:
- make 'reasonable adjustments' if disabled people are unable to access provision.

### When did these duties come into force?

For work-based learning organisations in their capacity as a service provider:

- the duty not to treat people less favourably came into force in 1996
- the duty to make reasonable adjustments came into force in 1999
- the duty to make reasonable adjustments to physical features such as providing physical access to a building or installing features such as a loop system came into force in 2004.

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**For further information contact the person with responsibility for disabled students**

**or the Disability Rights Commission**

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

**helpline 0845 762 2633**

**or these other organisations**

**[www.lsc.gov.uk](http://www.lsc.gov.uk)**

**[www.LSDA.org.uk](http://www.LSDA.org.uk)**

**[www.niace.org.uk](http://www.niace.org.uk)**

**[www.skill.org.uk](http://www.skill.org.uk)**



**Learning+Skills Council**

**Disability Rights Commission**



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**Can work-based learning providers discriminate against a disabled learner even if they are not aware that the learner has a disability ?**

Some disabilities are visible. However many, for example dyslexia, a mental health difficulty or certain medical conditions are not. If providers do not know an individual is disabled they may unknowingly discriminate against him or her, but their ignorance of the impairment may mean that they are justified in their actions. However, learning providers should have a process in place which allows learners to disclose any impairment they may have.

Ultimately it is up to the learner whether or not they choose to disclose a disability but providers need to have procedures in place to allow learners to disclose. These need to be confidential, for example not asking people if they are disabled in a group situation. Learning providers should also give learners ongoing opportunities to disclose.

A disabled learner might think that his or her disability will not affect his or her training but, particularly when there are certain changes to the programme such as going out on work placement, he or she might feel that they need certain adjustments to be made.

Providers will also need to discuss with the learner what information he or she is happy to share with other people who may be training him or her or with employers. As a provider you have duties under the Data Protection Act not to pass on or store sensitive written information without a person's consent.

Under all three parts of the DDA, there is an individual duty to make reasonable adjustments for disabled people who are known to be disabled. However, under Part 3 and Part 4 there is also a duty to make 'anticipatory' reasonable adjustments for disabled people 'at large'. This means that providers cannot wait until a disabled person commences a work-based learning programme and discloses a disability, before thinking about what reasonable adjustments could be made.

Instead, providers should be continuously anticipating the requirements of disabled learners and the adjustments that could be made for them. Failure to anticipate the need for an adjustment may mean that it is too late to comply with the duty to make reasonable adjustments when it is required. This means that in some cases ignorance of a learner's disability will not give the provider a defence for failing to make a reasonable adjustment, if the adjustment should have been made as part of the provider's wider duty to make anticipatory reasonable adjustments, such as providing accessible parking for disabled learners.

**What about when a learner is training in the workplace ?**

If a learner who is following a training programme is also a paid employee the employer will have duties towards him or her under Part 2 of the DDA while he or she is at work. Additional funding is available to help pay for the costs of making reasonable adjustments for employees under the Access to Work scheme, which is funded by the Employment Service. This funding can cover equipment, adaptations and specialist support workers (for example, personal assistants, sign language interpreters etc.).

## Good practice checklist for managers of work-based learning provision

If the learner is not a paid employee the employer does not necessarily have legal duties towards him or her under Part 2 of the DDA. However, the work-based learning provider should, as a matter of good practice, take reasonable steps to ensure that the employer does not discriminate against disabled learners. This might include checking that the place of employment has a policy which states that the employer will not allow discrimination against disabled people, and taking practical steps to support employers in providing reasonable adjustments for disabled learners.

### **What can disabled learners do if they feel they have been discriminated against by a work-based learning provider?**

They could first of all complain through the provider's internal complaints procedures. If this does not satisfy them they could take the provider to court.

### **Are there any other recent changes to the DDA?**

Yes. Since October 2004 DDA Part 2 which covers employers has been changed by:

- extending the duties to all employers (currently these duties only cover employers who employ more than 15 people)
- employers duties to be extended not just to paid employees but also to those on work placements whose work placement is a part of a Vocational Training Programme.

The following may help managers of work-based learning provision ensure good practice and so to comply with the DDA.

### **Are all managers:**

- familiar with the Disability Discrimination Act and with their responsibilities?
- aware of how accessible their provision, policies and procedures, training and buildings are?

### **Disclosure and confidentiality**

As explained above, many disabilities are hidden and not overt. It is important that all learners feel confident that they can disclose their disability and that their individual needs will be addressed.

### **Do managers ensure that:**

- a welcoming environment is created in which learners with any kind of disability feel confident about disclosing their disability?
- sensitive procedures in place to allow disabled learners to disclose their disability. And that this is followed up by ensuring, where relevant, that appropriate support is put in place and that this is monitored in conjunction with the learner?
- all staff are trained so that relevant information about the support required by a particular learner is passed on, with the learner's consent, to relevant staff/employers?

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### **Planning**

The implementation of the DDA will not be effective if providers merely respond in an *ad. hoc.* way to individual disabled learners. Recognition of the inclusion of disabled learners needs to be incorporated into every aspect of an organisation's planning processes.

#### **Do managers ensure that:**

- planning processes take into account the need to plan for the inclusion of disabled learners?
- an action plan is in place to ensure that accessibility (for all disabled learners, not just physical accessibility) is gradually improved?
- appropriate funds are allocated for reasonable adjustments?
- contracts with agents and with employers make clear what is expected of them regarding their treatment of disabled learners?
- appropriate procedures are in place to ensure that any discriminatory treatment by staff or agents is picked up on and dealt with effectively?
- complaints of discriminatory treatment are dealt with quickly and fairly by internal complaints procedures?

### **Auditing and monitoring**

In order to ensure that disabled learners receive necessary support managers will need to audit their policies, procedures and practices and also ensure that they have ongoing monitoring procedures in place.

#### **Do managers ensure that:**

- policies, procedures and practices for including disabled learners are audited across all provider sites?
- systems are in place, which involve disabled learners themselves, to ensure that these procedures and practices are working effectively for the learner?

### **Staff training**

Implementation of the DDA cannot be solely the responsibility of an individual member of staff who has responsibility for this area of work. All staff will need relevant and ongoing training.

#### **Are managers confident that:**

- all staff and agents are aware of their responsibilities under the DDA and receive sufficient training to know how to avoid discriminating against disabled people?
- all staff understand and take seriously their responsibility for complying with the DDA?
- opportunities are in place to ensure that good practice in including disabled learners which may be happening in one part of the organisation can be shared and replicated throughout the organisation?

### **Risk assessment**

The argument is often made that certain workplace environments cannot include people with a particular disability on health and safety grounds. Of course health and safety is of paramount importance. However, blanket exclusions can be seen as discriminatory under the DDA. Individual risk assessments need to be carried out in order to ascertain whether it is in fact possible to make adaptations which will mean that an individual disabled person can be safely included in a particular environment.

#### **Do managers ensure that:**

- appropriate staff are trained in how to use risk assessment in relation to disabled learners, ensuring that risk assessment is used wherever possible to include rather than exclude a learner?