



# **Part 3 – Provision of Goods, Facilities & Services**



## **Part 3 - Provision of goods, facilities and Services**

Code of Practice

Rights of Access

Goods, Facilities, Services and Premises

Effective from 27 May 2002

Replaces original code issued in 1996, revised 1999



## **Part 3 - Provision of goods, facilities and Services**

- Reasonable adjustments made for the population at large
- Affects all providers of services, whatever size
- Services provided to the Public, or to a sector of the public whether public, private or voluntary
- No differential between free and charged
- Phased introduction



## Part 3 - Timescale

- 1996 Unlawful to treat a disabled person less favorably
- 1999 Change policies, procedures and practices which make it impossible or unreasonably difficult to use a service
- 1999 Provide auxiliary aids and services
- 1999 Overcome physical barriers
- 2004 Remove physical barriers



## **Part 3 - Provision of goods, facilities and Services**

- Remove the physical feature
- Alter the feature so it no longer has the effect
- Avoid the feature
- Provide service by reasonable alternative means

Legal arguments as to whether should be removed by 2004 or plans in place to remove thereafter.

**Plans should be well advanced by 2004**

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**Councils warned not to blame disabled people for public toilet closures**

Friday, January 02, 2004

Local councils are using the introduction of new disability access laws as an excuse to close public toilets, the Disability Rights Commission (DRC) said today.

From 1st October 2004, any body that provides a service to the public has a new legal responsibility to consider what improvements they can make to ensure their service isn't impossible or unreasonably difficult for disabled people to use. That might involve changes to buildings. However the new law only requires what is reasonable.

But many local councils claim the new legislation means that inaccessible public toilets must be closed. The DRC has heard of toilets being shut down in towns and cities across Britain - for example in Swansea and Tiverton in Devon - where the new duties have been used as a reason for closures.

Earlier this year, the DRC launched its Open4All campaign to promote awareness of the

<http://www.drc-gb.org/law/index.asp>



## **Part 3 - Services do not include**

- Education - Covered by SENDA
- Transport
- Services not provided to the public such as members clubs
- Manufacture and design of products
  - Microsoft Windows
  - Video recorders



## Part 3 – Policies, Procedures and Practices

- Changing 'no dogs' policy to allow service animals
- Monitoring designated car parking facilities to ensure they are not abused
- Providing information on Audio Tape
- Providing BSL
- Ensuring leaflets etc are available in a variety of formats
- **Ensuring Staff remain aware of all issues**



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**Restaurant refuses to allow visually impaired customer and his guide dog entry into their premises - DRC/00/127.**

**William Purves -v- Joydisc Ltd**

**Summary:** The client – who has a visual impairment – and his companions had made a telephone booking at the restaurant in question, and on doing so were informed that the Client's guide dog would have to sit outside the rear of the restaurant. On the basis of this reaction, the Client did not attend the restaurant.

**Interest:** This case has good prospects of success covering a priority area for the Commission and can be used to highlight difficulties people with visual impairments have in obtaining access to goods, facilities and services. In addition, the appeal is being supported in order to seek to improve the level of damages awarded in Scotland, which have been relatively low when compared to equivalent damages awarded in England & Wales.

**Outcome:** The case hearing was listed to be reconvened on 1st February 2002. The client was successful at hearing, being awarded £350 in damages and £150 costs. However, the Commission is supporting an appeal against the decision on damages and the appeal is likely to be heard in early 2003. The appeal succeeded and damages were increased to £1000.

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**Bookshop refuses to allow guide dog into premises - DRC/01/3706.**

**Summary:** The client, who is visually impaired, was asked to leave a bookshop in Wales because he was accompanied by his guide dog. He had just entered the store when he was told by the owner that dogs were not allowed. The client pointed out to the owner that he could be in breach of the DDA but the owner responded that he did not care about the law and pulled the client towards the door of the shop telling him that he must leave. There is witness evidence from the client's friend who accompanied him into the shop. In response to a letter from the DRC the book shop owner offered the justification that there is limited space in the shop and that dogs could cause damage to his stock, a justification he had not mentioned at the time of the incident.

**Interest:** A fairly common example of blatant discrimination, with good prospects of succeeding on the available evidence, also disclosing significant public humiliation for the client in question.

**Outcome:** The Commission issued proceedings but the defendant refused to accept service of the documents. As the time limit for submitting a defence had expired, an application for Summary Judgement was made to the court. Summary judgement was obtained but subsequently disapplied upon motion of the defendant. The case proceeded to hearing, being part heard on 7th March 2003, and was completed on 4th April 2003. The court decided the treatment complained of was not unlawful as it could be justified on the grounds of health and safety in the particular circumstances of this case.

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## Part III Goods and Services

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**Local pub refuses to allow assistance dog into premises to accompany deaf client - DRC/02/5986**

**Canniffe -v- Molescroft Inn (County Court case number:**

**Summary:** The client, who is profoundly deaf and uses a hearing dog, was told that she was not welcome in a pub because of her dog. The landlord said he did not want the dog in the pub because food was served. She tried to explain the situation but was told not to bother by the landlord. The landlord then said that he did not believe she was deaf and her friend had to explain that she could lip read very well. They then had to leave the pub.

**Interest:** The involvement of a dog assisting a person with a hearing impairment is a distinguishing feature warranting support in this case, contrasted with the now fairly non-strategic Part III cases the Commission has previously assisted in respect of similar issues.

**Outcome:** Legal proceedings were commenced. The case was heard in the County Court on 22nd April 2003. The court decided the defendant pub unlawfully discriminated against the client and awarded the client £1200 for injury to feelings.

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## **Part 3 – Auxiliary Aids**

- Providing Induction loops and ensuring that they are switched on
- Portable ramps
- Specific equipment – vibrating pillows
- Staff trained in access issues



## **Part 3 - What is reasonable?**

The Oxford Dictionary gives 3 meanings

1. Ready to use or listen to reason, sensible, a reasonable person
2. In accordance with reason, not absurd, logical
3. Moderate, not expensive or extortionate (i.e. reasonable prices)

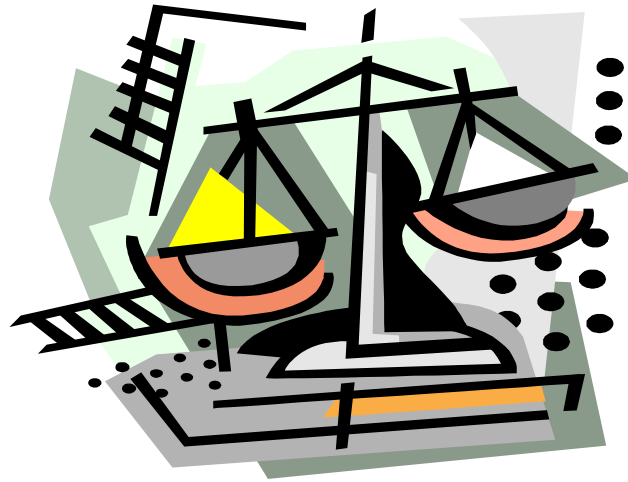


## **Part 3 - What is reasonable?**

- Effectiveness
- Practicality
- Cost
- Disruption
- Financial/other resources
- Determined by the Courts

## Part 3 - What is reasonable?

Balancing the cost between removing the barrier or relocating the service



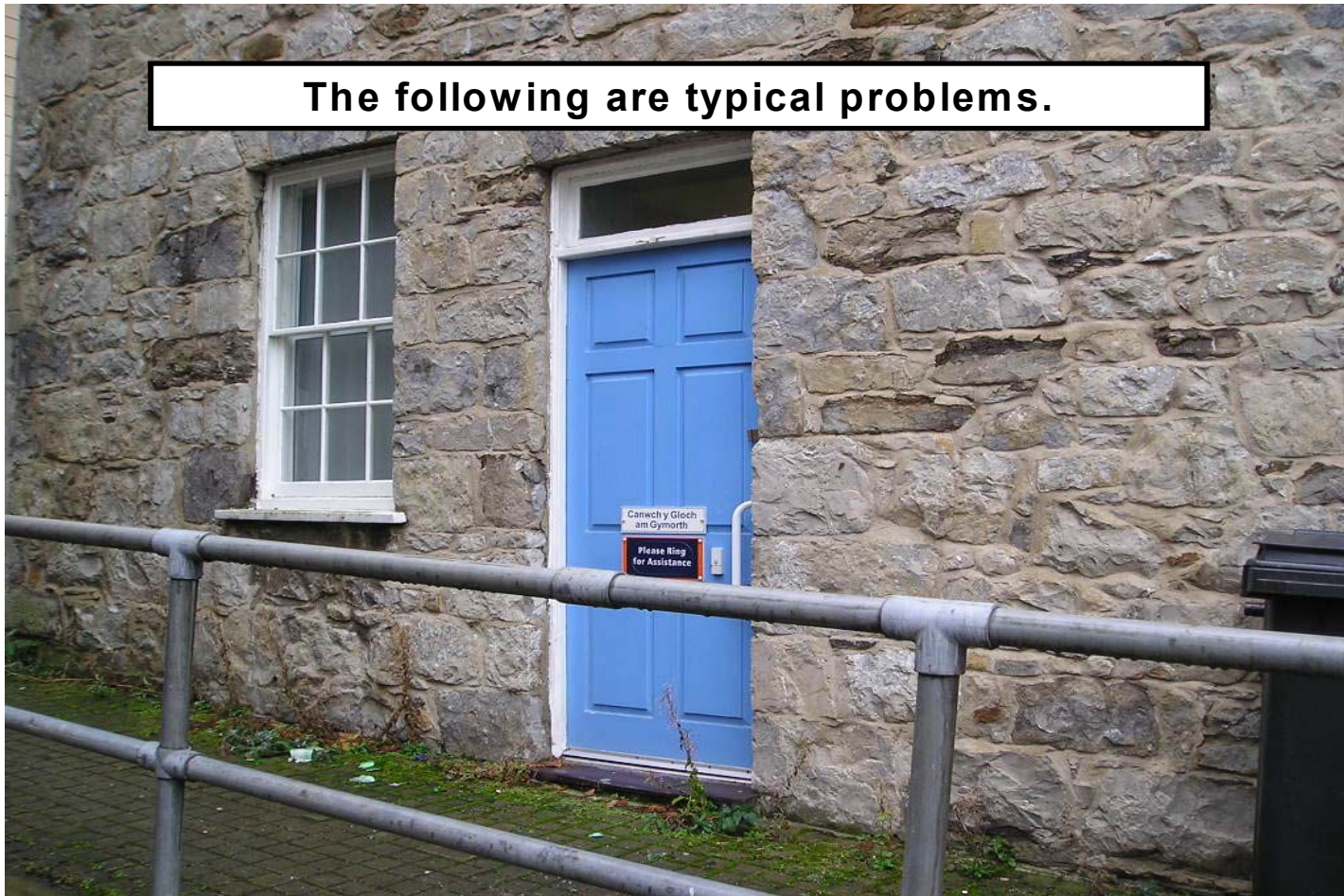


## **Part 3 - Compromises?**

- receive goods on the pavement outside a shop entrance
- vote by post or over the internet
- have a haircut in the kitchen
- take a virtual tour of the museum
- have library books brought downstairs



**The following are typical problems.**



















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**DRC Legal Service**

**Nightclub prevents access to Disabled WC - DRC/01/4696**

**Summary:** The client has Spina Biffida and Arthritis. She visited the defendant's nightclub in Autumn 2000, and during the course of the evening tried to access the disabled toilet, which is kept locked. The first time she tried to obtain the key she had to prove she was disabled, which she did by waving her sticks at the member of staff with the key. When she requested the key for a second time later in the evening, various staff members told her they did not have the key. She continued to ask numerous members of staff without success and her friend later found the key. However, there was a delay of around half an hour that caused the client significant inconvenience.

**Interest:** The duty to make reasonable adjustments includes the requirement for service providers to ensure that disabled people can access the adjustment they make without difficulty. Otherwise, the consequences could constitute unlawful disability discrimination, in this case adversely affecting the client's dignity.

**Outcome:** The case settled a few days before the hearing. The settlement terms included the defendant paying financial compensation for injury to feelings. The defendant has also agreed to look at the provision of facilities for disabled people at all their nightclubs throughout the country to ensure that they meet the requirements of the DDA.

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## **Part 3 - Enforcement**

- Service provisions are enforced by the disabled person taking the service provider to Court – most prefer to resolve the issue
- Legal aid is not available
- DRC may give assistance when the case is of merit and likely to establish a legal precedent



## Part 3 - Enforcement

- Civil not criminal law. Damages and possibly costs awarded based upon distress caused.
- Number of Solicitors prepared to act free of charge on behalf of access groups
- Damages may be punitive but the detrimental publicity generated could be significant



## Part 3 - Enforcement

- In England and Wales you can ask for a free application form from your local county court. The form will include guidance notes. Normally, you must issue your claim within 6 months of the date when you were discriminated against. You will have to pay a fee of £115 to issue proceedings, unless you are claiming certain benefits or have a very low income. In most cases, your claim will be allocated to the small claims track (all claims of £5000 or less). The small claims procedure is meant to be simple and informal. You should be able to conduct your case without a solicitor



## **Part 3 - Selling, letting or managing property**

- Unlawful to discriminate because of disability
- No legal duty to make reasonable adjustment to premises which are sold, let or managed eg provision of accessible WC's
- Persons managing or disposing of premises may be service providers in other respects

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**Private landlord refuses to rent flat out to visually impaired prospective tenant DRC/00/780.**

**Summary:** Upon seeing the advertisement for the rented property, the client arranged, through the agent, an appointment to view the property in question, which he viewed accompanied by a friend. He expressed his desire to rent the property and completed and returned to the agent the proposal form together with the sum required for the deposit. During a meeting with the agent to discuss and agree the contract, the client was subjected to a series of questions, questioning his capacity to enter into the contract and implying that he posed a health and safety risk on account of his disability. In addition, the agent had refused to read out the terms of the contract to him. The client subsequently received a telephone call from the agent advising him that the landlord had decided he could not rent the flat. He asked for this to be put in writing, but the agent refused to do so unless he received a fee for this. As a result, the client experienced considerable inconvenience in that he had to make alternative living arrangements with family friends a substantial distance away from where he intended to live, causing increased travel time and travel costs.

**Interest:** This is one of the few cases brought to court concerning premises under Part III of the DDA. The case highlights a common problem encountered by disabled people and could promote wider awareness of the availability of a legal remedy. In addition, this is one of the few Part III cases brought before the courts in Wales.

**Outcome:** Proceedings were issued and defended, although the defendants admitted the client had a disability falling within the statutory definition. The full hearing was listed to take place in mid November 2002 but the case settled for the sum of £1750

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## Part 3 - Selling, letting or managing property

- Landlord cannot require tenant to make adjustments either during or end of lease – not a *statutory requirement*.
- Uncertain if costs can be recovered under service charge unless express provision within the lease otherwise only by agreement
- Dilapidations requirement currently unclear
- Landlords not under a duty until 2004



## **Part 3 - Selling, letting or managing property**

- Check out RICS Website for latest news in respect of Rent Reviews.
- Recent tribunal hearings reported by Donaldson's indicated properties demonstrated as non-compliant have had rent reductions when comparables were accessible.





## Part 3 - Building Regulations

- If building is constructed in accordance with Part M, characteristics which still comply do not have to be altered.
- Characteristics not covered by Part M may need altering
- The DDA does not override existing legislation such as Planning or Listed Building Consent



## Part 3 - Building Regulations

- No requirement for compliance for Change of Use or Refurbishment
- New buildings may not meet address needs of disabled people and that work to existing buildings will not secure improvements
- Work will not meet current 'best practice'

