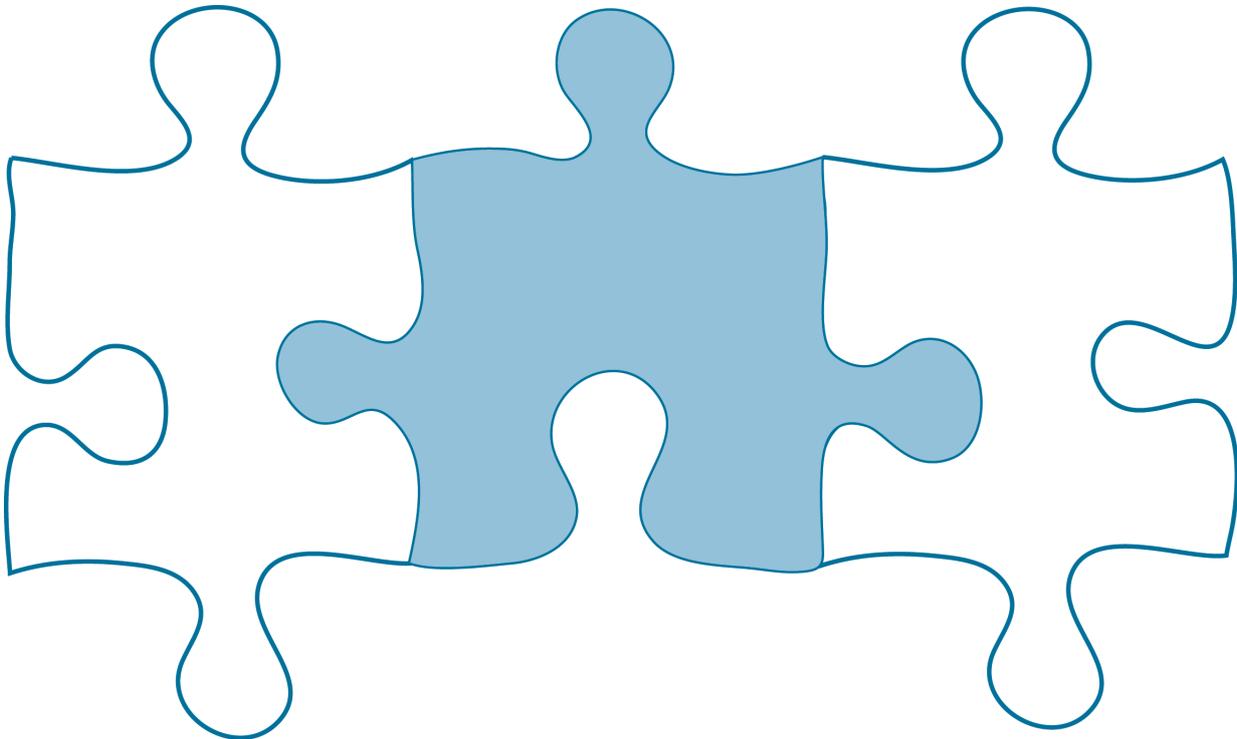


Early Years and The Disability Discrimination Act 1995



The jigsaw motif has been used as a device to symbolise the different parts of the Disability Discrimination Act that are relevant to disabled children in early years settings.

Disability Discrimination Act 1995

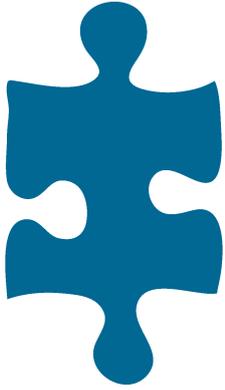
All early years provision covered from September 2002

Applied to childcare since 1996

SEN and Disability Act 2001
extended DDA to cover education

The DDA has applied to childcare since its implementation in 1996. The SEN and Disability Act of 2001 extended the DDA to cover all education settings.

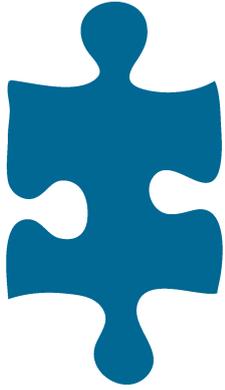
The Change in the legislation has provided an opportunity for early years providers to consider the implications of the DDA across all they do.



Duties cover:

- ❑ schools and pre-schools
- ❑ mainstream and special
- ❑ childminders and networks of childminders
- ❑ private, voluntary, independent and state-maintained provision
- ❑ education and social services provision

The duties now apply to every possible type of early years setting, whoever provides it and whoever pays for it.



Different parts of the DDA:

- ❑ Part 4 covers schools
- ❑ Part 3 covers settings other than schools

Part 4 of the DDA applies to all schools, whether they are state-maintained, private or independent.

Part 3 applies to all other 'providers of goods and services'. In the context of this presentation this is pre-schools, day nurseries, playgroups, drop-in centres, any provision that is not constituted as a school. In the context of our national life, the same Part 3 duties apply to shops, high street banks, cinemas and others.

Whilst there are differences in the way the legislation applies to different settings, the spirit of the law is essentially the same:

- to ensure that disabled children are not discriminated against in their access to early years care and education.

The core disability discrimination duties are the same across all settings and all parts of the DDA. To emphasise what is in common, the presentation goes on to look at the common parts of the legislation first and then later to the parts that apply differently.



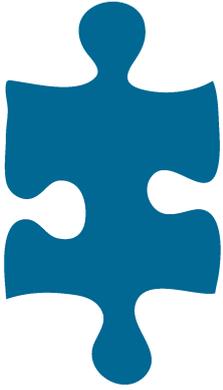
2 key duties:

- ❑ not to treat disabled children less favourably
- ❑ to make reasonable adjustments for disabled children

These two duties apply across all the different parts of the DDA: employment, provision of goods and services and education.

The two duties are linked and work together to ensure that disabled children are not discriminated against.

The next slide focuses on less favourable treatment.



Less favourable treatment:

- ❑ less favourable treatment than some
- ❑ for a reason related to child's disability
- ❑ and it cannot be justified

Illustrative examples:

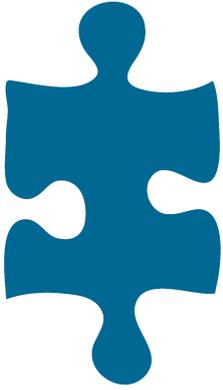
1 A mother seeks admission to a nursery school for her son who has Hirschprung's disease. The school says that they could not admit him until he is toilet trained. That is their policy for all children. Hirschprung's disease may lead to the late establishment of bowel control. The refusal to admit the boy is for a reason related to his disability and may be discriminatory. There may sometimes be justification for less favourable treatment, but it is the blanket policy in this example that is likely to make it discriminatory.

2 A young boy with autism collects his sandwich box for his lunch and then has to queue for a drink. He is anxious and agitated in the queue and when another boy teases him he turns round and bites him. It is a severe bite and the young boy with autism is excluded from the setting. The boy is excluded because he bit another child. The question is whether biting the other child was linked to the nature of his disability. Some of the features of his autism are that:

- *he finds it difficult to be so close to the other children;*
- *he does not understand the purpose of a queue; and*
- *he does not know how to cope with the taunt from the other boy.*

It is possible that his reaction is related to the nature of his autism and therefore the exclusion may be less favourable treatment for a reason related to his disability. In certain circumstances, there may be justification for treating a disabled child less favourably. Less favourable treatment may be justified where there is a 'material and substantial' reason and biting another child might count. However, there is a further consideration: it may not be possible to justify less favourable treatment if 'reasonable adjustments' could have been made but weren't.

Carry this second example over to the reasonable adjustments duty on the next slide, to show the linkage.



Reasonable adjustments:

- ❑ barriers have to be anticipated
- ❑ adjustments have to be made
- ❑ there may be justification

Continue the example of the young autistic boy from the previous slide:

What might 'reasonable adjustments' have been in his situation:

- *putting the drinks ready on the table before lunch, at least for the boy with autism, so as to avoid the queuing;*
- *giving the boy a safe place to go when he gets too anxious;*
- *training staff in understanding the nature of his autism.*

If the setting had done all these things and the incident had still occurred, the exclusion may have been justified, but if they had not done any of these things they may not be able to justify the less favourable treatment of the disabled boy.

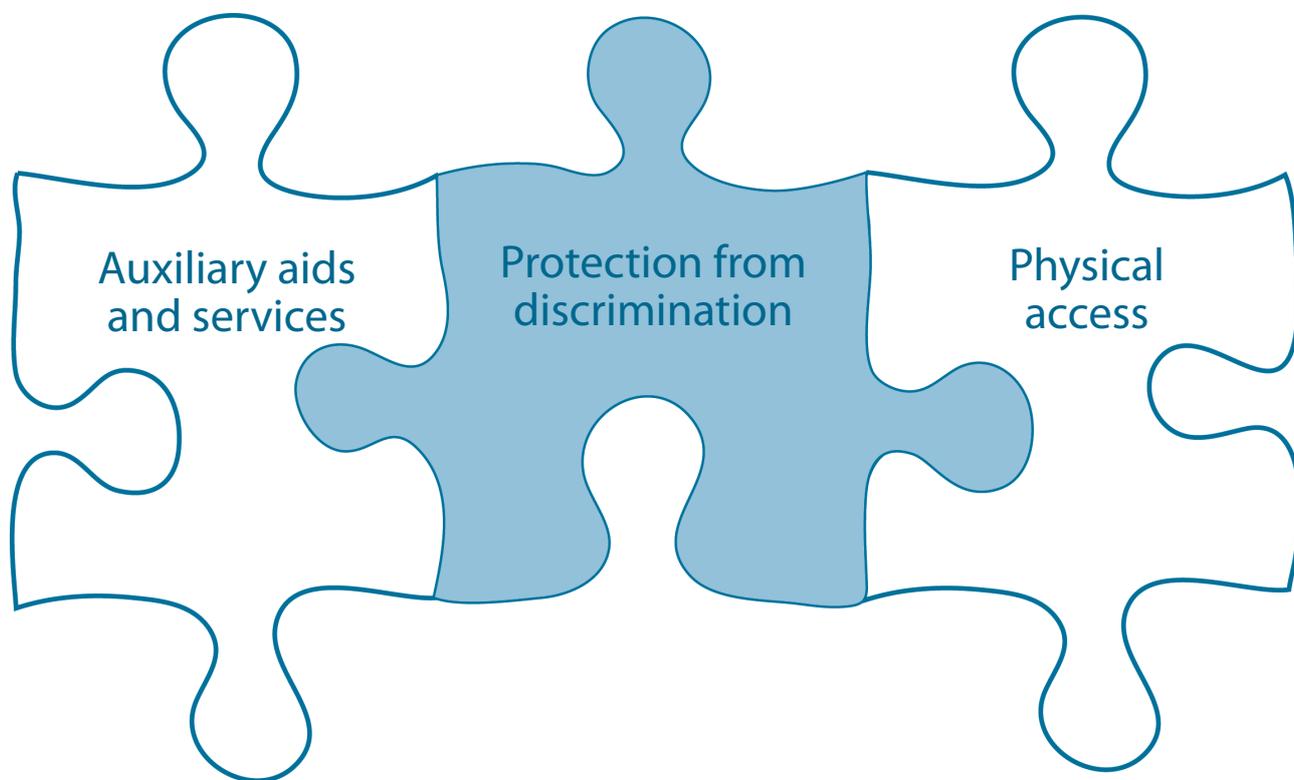
Another example to illustrate the reasonable treatments duty in action:

A hearing impaired child is to be admitted to a nursery education centre. The centre:

- *arranges training for staff in the appropriate use of radio aids;*
- *draws up guidance for staff in the light of the training;*
- *changes the location of the book corner so that staff are not silhouetted against the natural light at story times and at other visual group times;*
- *pays particular attention to having visual prompts (puppets and other props) to hand when they are planning activities with the children and at story times.*

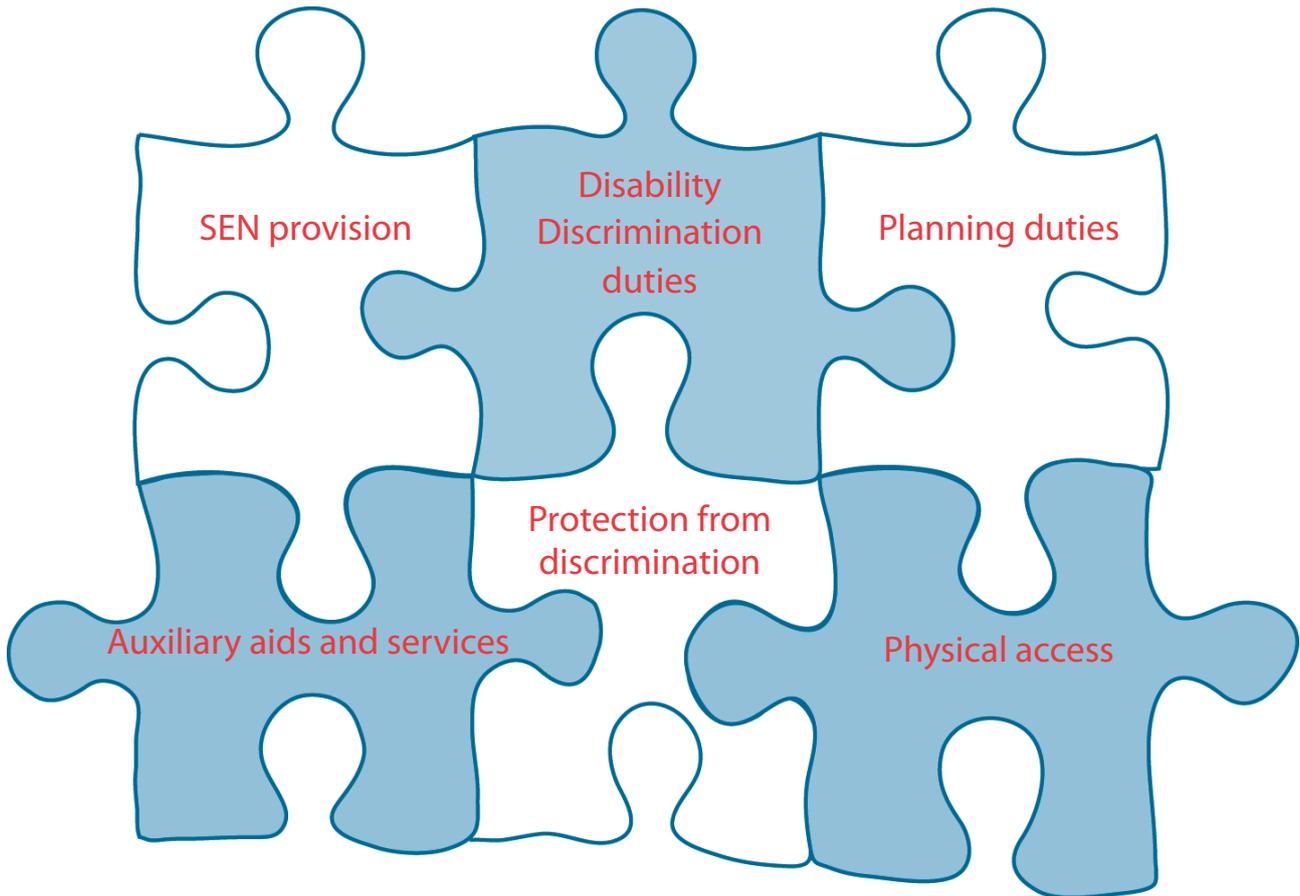
The key to making reasonable adjustments is thinking ahead - anticipating barriers and how to remove them to enable a disabled child to join in, enjoy an activity and benefit from it. To do this effectively settings need to involve parents and children in sharing information and in thinking creatively. Parents may already have encountered the same, or similar, barriers and found effective ways of removing or minimising them.

3 key elements in disability discrimination legislation



The slide illustrates the three elements in the DDA that combine to counter disability discrimination. This is where different parts of the DDA work differently. In most parts of the DDA these three duties come as one package. For schools these three elements are covered by different legislation.

The 3 key elements and the schools' duties, Part 4



Auxiliary aids and services

It is the SEN framework that requires schools and, where necessary, the local authority, to make provision to meet the special educational needs of disabled children. This provision includes what the DDA describes as 'auxiliary aids and services' which, in the SEN framework, is referred to as, 'special educational provision.' This is the equipment and the human resources that may be needed to meet a child's needs.

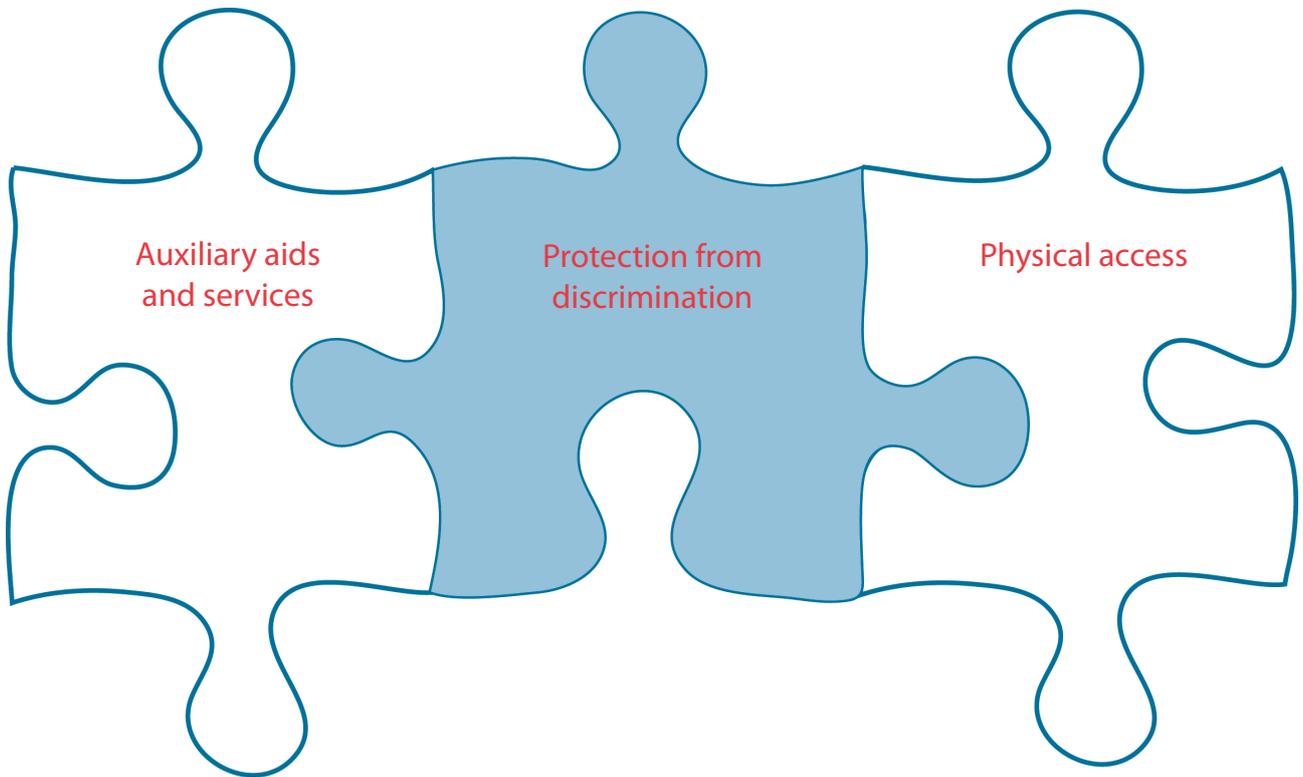
Physical alterations

The requirement to make physical alterations is covered by the 'Planning duties' in the DDA. These require schools and local authorities to develop plans to improve accessibility for disabled children over time. These plans had to be published by April 2003 and must show how schools are going to make improvements in three areas:

- improvements in access to the curriculum,
- physical improvements to increase access to the buildings, and
- improvements in the provision of information in different formats for disabled children.

Protection from discrimination

Protection from discrimination arises from the impact of the DDA on behaviour and attitudes, the way that schools organise themselves and what is often referred to as policies, practices and procedures (examples discussed on previous slides are all covered in this way).



Reasonable adjustments, exemptions in Part 4:

Auxiliary aids and services

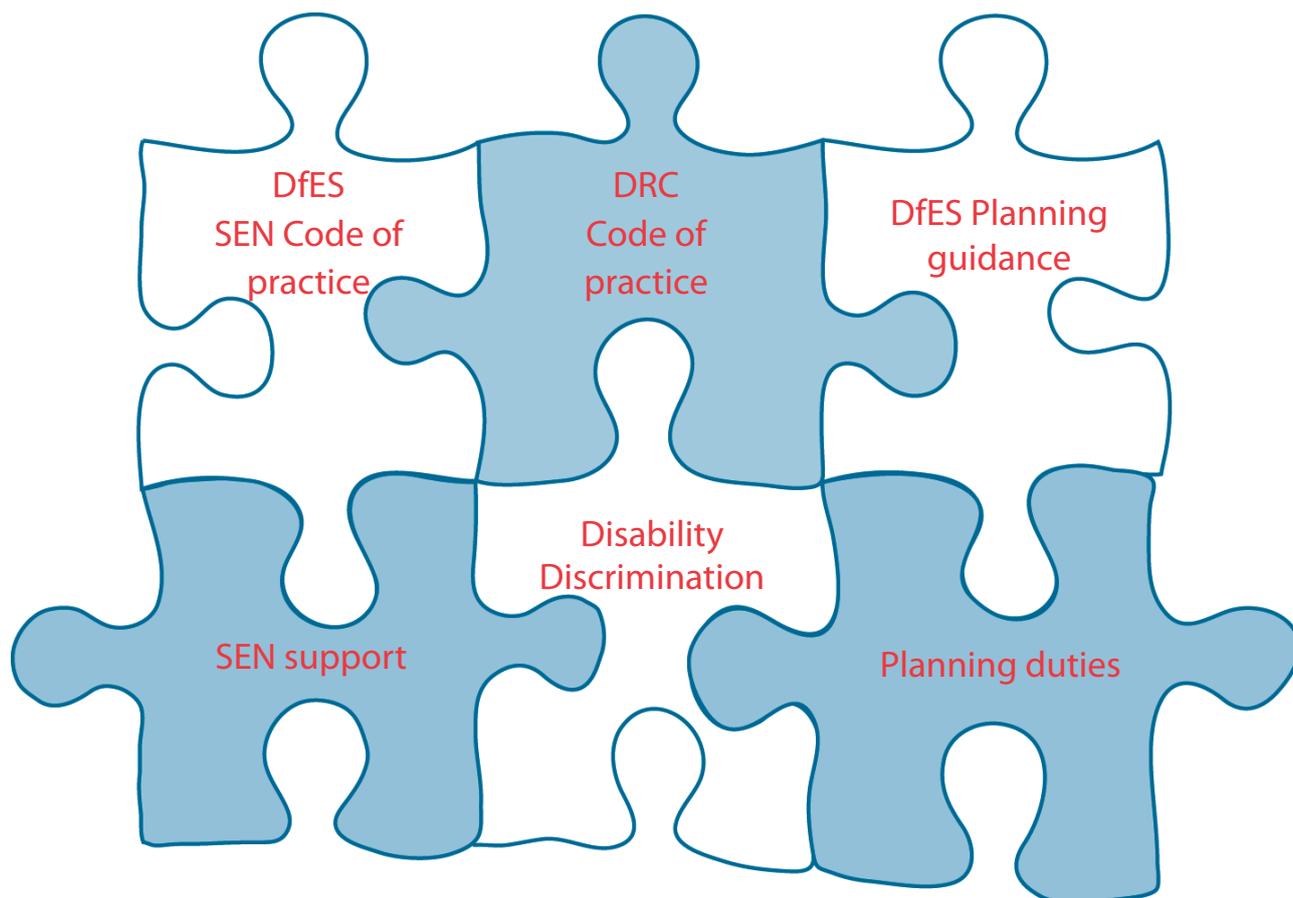
Removal or alteration of physical features

The DDA requires schools to make 'reasonable adjustments' but the reasonable adjustments duty does not require schools to :

- provide auxiliary aids and services;
- make physical changes to buildings.

These two aspects of reasonable adjustments are exempted from the duty. This is because, for schools, these two requirements are covered by the SEN Framework and the planning duties, as described on the previous slide.

Guidance



Guidance for schools: the disability discrimination duties

The Disability Rights Commission provides a Code of Practice for Schools to explain the schools' duties. It includes examples of how the duties work in practical situations. The DRC also provides a shorter *Guide for Schools* and a *Guide for Parents*.

Disability Rights Commission:

Telephone: 08457 622 633

The Planning duties

The Department for Education and Skills provides guidance on the Planning duties. A summary of *Accessible Schools: Planning to increase access to schools for disabled pupils* was sent to every school in England. Further copies of the summary, and the full version of the guidance, are available from DfES Publications:

Telephone: 0845 60 222 60

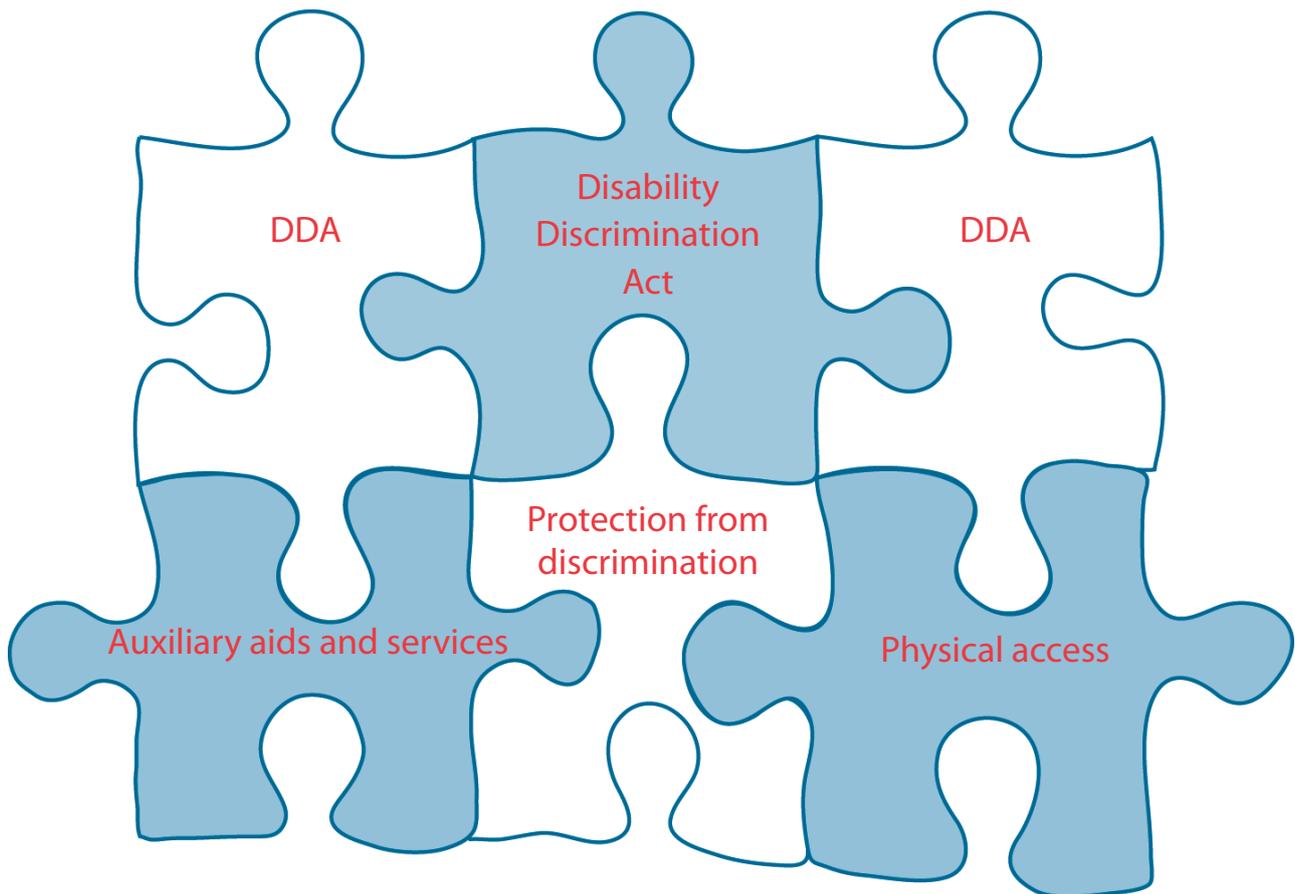
The SEN duties

The SEN Code of Practice provides the main guidance on the SEN duties.

DfES Publications:

Telephone: 0845 60 222 60

Part 3 duties and providers other than schools



Part 3 of the DDA applies to all providers that are not constituted as schools. The reasonable adjustments duty in Part 3 includes:

- the provision of auxiliary aids and services; and
- since October 2004, making physical alterations to buildings.

Whilst the inclusion of these duties for providers that are not schools may make them look more demanding than the schools' duties, there are other considerations to be taken into account, see next slide.



Reasonable adjustments in Part 3:

- ❑ 'reasonable'
- ❑ auxiliary aids and services:
 - direct duty in DDA
 - SEN route may be available
- ❑ physical access and alterations
 - reasonable alternative
 - since 2004, physical alterations

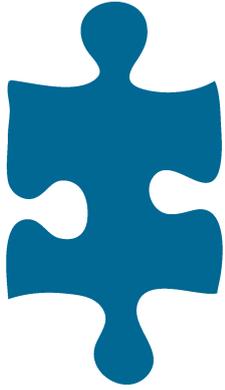
Reasonable: The notion of what is 'reasonable' informs what a provider might need to do. Costs and resources are some of the relevant considerations. The cost of making a particular adjustment may be seen in the light of the resources available to the setting, so that an individual childminder or a small setting with a small budget may not be expected to make adjustments that might be expected of a larger setting with a larger budget. Many adjustments are low cost or no cost, for example changes of routine, the positioning of equipment, or the use of one toy rather than another, to practice a particular mental or physical skill.

Auxiliary aids and services: Providers will need to draw on their own resources to meet the requirement to provide auxiliary aids and services. However, in practical terms providers may also be able to draw on the SEN framework. Support, equipment or particular expertise, may be available through the EYDCP, the Area SENCO and other services provided by the local authority and local health agencies.

Physical alterations: Since 2004 providers have had to make reasonable adjustments to the physical features of their premises to overcome physical barriers to access. However, the small budgets of some providers may limit what physical alterations they might be required to make.

The duty to provide access by an alternative means continues, subject again to reasonableness.

Where providers use rented premise, they may still have responsibility for making physical alterations, but the landlord may also have responsibilities.



Guidance on Part 3:

Disability Rights Commission

- Code of Practice: Rights of Access
- Goods, Facilities, Services and Premises

Council for Disabled Children

- Access to goods and services

Council for Disabled Children and NCB ECU

- Early years and the DDA:
What service providers need to know

General guidance on Part 3

A Code of Practice published by the Disability Rights Commission (DRC) *Code of Practice: Rights of Access: Goods, Facilities, Services and Premises*, applies to all providers of services.

Disability Rights Commission:

Telephone: 08457 622 633

Focused on Part 3 and children's services

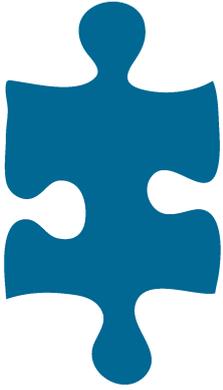
The Council for Disabled Children produces a leaflet, *Access to goods and services* which provides advice on the DDA in the context of children's services.

The Council for Disabled Children:

Telephone: 020 7843 1900

Guidance on early years and the DDA

Council for Disabled Children & the Early Childhood Unit at the National Children's Bureau produce a booklet, *Early years and the Disability Discrimination Act 1995: What service providers need to know*, which is down-loadable from: www.earlychildhood.org.uk/downloads



'Reasonable' adjustments:

- ❑ costs and resources
- ❑ health and safety
- ❑ further guidance

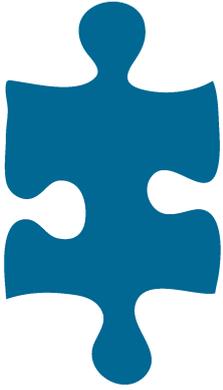
These are some of the considerations that may be taken into account in considering what is 'reasonable'.

Costs and resources: Already touched on: the cost of making a particular adjustment is seen in the context of the resources available to a provider.

Health and Safety: Health and safety considerations should not be seen as automatic barriers to disabled children. For any adjustment that may have health and safety implications a setting would be well advised to carry out a risk assessment with a view to eliminating or minimising the risks involved. These considerations do not relieve the setting of identifying reasonable adjustments. They do affect decisions about which reasonable adjustment should be made, for example enabling a standing frame to be stored accessibly at times when it is not in use: the location will be determined both by the child's access to the frame and by the requirement that it does not constitute a hazard. If that means shifting other furniture or equipment around, that might be a reasonable adjustment

Justification: There may be justification for failing to make a reasonable adjustment. A setting may be able to justify a failure to make a reasonable adjustment, but only 'for a material and substantial reason'.

Further guidance: More detail is available in the guidance documents, see previous slide.



Which children are covered by the duties?

Definition of disability in the DDA: physical or mental impairment with a substantial and long-term adverse effect on ability to carry out normal day-to-day activities

SEN and disability

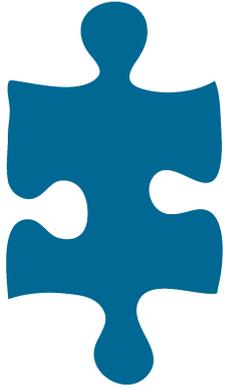
It is important to emphasise that the definition of disability in the DDA is very broad and includes a much larger group of children than is normally thought. It is helpful to go through the different elements of the definition:

- *Physical impairment* includes sensory impairments.
- *Mental impairment* includes learning difficulties and impairments arising from a mental illness.
- *Substantial* in the DDA means more than minor or trivial
- *Long-term* means that the impairment has lasted at least a year, or is likely to last for at least a year.
- Because *substantial* and *long-term* set low thresholds, the effect is to include a greater number of children within the definition.

The definition includes a wide range of impairments, including hidden impairments. If, for example a child has an impairment affecting their mobility, sight or hearing, or has learning difficulties, mental health problems, epilepsy, autism, a speech and language impairment, asthma or diabetes, then he or she may have a disability if the effect on the child's ability to carry out normal day-to-day activities is *substantial* and *long-term*.

Where a child has a fluctuation but progressive condition, such as cancer or HIV, the child counts as disabled even at times when the effect of the condition is not substantial.

A child may have significant behaviour difficulties and these may relate to an underlying impairment. If they do, the child may count as disabled because of the underlying impairment.



Information issues:

- ❑ lack of knowledge defence
- ❑ confidentiality

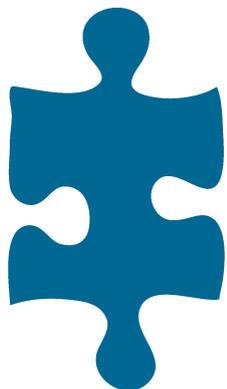
Settings have to make adjustments and need the information that parents hold in order to meet this duty. It is important that settings seek information from parents before a child is admitted, so that the necessary adjustments can be put in place in good time.

Lack of knowledge defence

If, despite opportunities and encouragement, parents choose not to tell the setting that their child has a disability, the setting may be able to claim they did not know about the child's disability. A setting would only be able to claim this if they had taken reasonable steps to find out about the child's disability.

Confidentiality

If a parent does not share information about their child's disability, but asks the manager or head teacher to keep that information confidential, this may limit what reasonable adjustments can be made for this child. The duties recognise this.



Who has responsibility?

Part 4: the 'responsible body' for the school:

- governing body or the local education authority
- the proprietor

Part 3: the provider

Part 4 (schools' duties)

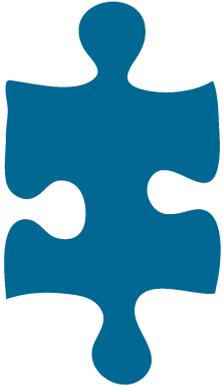
Responsibility lies with the 'responsible body' for the school. This is likely to be the governing body of a state-maintained school or the 'proprietor' (the owner, the governing body, the management group or the trustees) of a private or independent school. More detail about 'responsible bodies' under the school' duties can be found in the Disability Rights Commission's *Code of Practice for Schools*.

Part 3 duties:

Under Part 3 it is the individual or the organisation that provides the service who has responsibility for the DDA duties. For a pre-school, playgroup or other voluntary group it is likely to be the management group or the organisation responsible for the service; for provision run by a social services department it is likely to be the social services department; for an individual childminder it is the childminder him or herself. More detail about the duties on service providers under Part 3 can be found in the Disability Rights Commission's *Code of Practice: Rights of Access: Goods, Facilities, Services and Premises*.

Considerations under Part 3 and Part 4:

Whilst the provider or the 'responsible body' is responsible for any discrimination, anyone working in a setting could expose it to a claim of discrimination. It follows that everyone in a setting need to understand the duties towards disabled children and know about the 'reasonable adjustments' that need to be made for particular children.



Remedy under Part 4:

- ❑ SEN and Disability Tribunal
- ❑ a declaration
- ❑ an order:
 - training and guidance
 - review, alteration of school policies
 - additional tuition
 - written apology
- ❑ no financial compensation

A claim of unlawful discrimination under Part 4 of the DDA:

- is made by the parent of a disabled child;
- to the SEN and Disability Tribunal, or in certain cases to a local admissions or exclusions appeal panel;
- if the SEN and Disability Tribunal determines that there has been unlawful discrimination, it can order any remedy it sees fit, see slide, but no financial compensation is available.

BANNED
from the school's
Christmas play,
from the school's
Christmas disco,
from making the school's
Christmas decorations,
and even from making
his mother a Christmas
card....
all because he's
DISABLED

A small number of claims has been made to the SEN Tribunal since the duties extended to education in 2002. The total claims registered from Sept 02 - July 04 was 159. The majority of these (70%) were to do with education and associated services. This included school trips, school special events, medication, administration, differentiation of the curriculum and bullying. This general information is from the Tribunal Annual Report. Because of the small number of claims heard, the SEN Tribunal has not yet published more detail. The Disability Rights Commission has backed a number of claims and provides information about these on its website. Where parents have spoken to the press, there is also information about the nature of the claims.

The newspaper headline is about Lee Buniak. He was excluded from his school's nativity play, from making a Christmas card to take home, was not invited to the school disco and was left out of a school trip and a class photograph. Lee was also excluded from assemblies and cake-making.

Lee's claim is also interesting because of the overlap with SEN provision: the school had extra funding for a full-time learning support assistant for Lee, but it failed to appoint a suitable full-time worker and, as result, Lee sat on his own in a classroom with either his mother or an inexperienced assistant. Part of the Tribunal's conclusion was that the school failed to employ support staff for Lee.

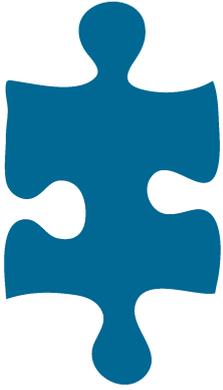
The school was ordered to apologise, to revise its policies for disabled pupils and recruiting staff. The governing body and staff also had to attend disability equality training.

School bans diabetic girl from eating vital crisps

Hannah Godly was diagnosed with diabetes when she was 4. She eats crisps to control her diabetes. When her school introduced a fruit-only snack policy, Hannah was told she could no longer eat her packet of crisps at playtime. When Hannah's parents complained that the crisps were vital to help maintain her glucose levels, the school made Hannah sit in the Headteacher's office to eat her crisps away from other children. Hannah felt she was being treated very differently from the other children and felt it was 'her fault' for having diabetes.

The Disability Rights Commission (DRC) supported Hannah's parents in making a claim to the Special Educational Needs and Disability Tribunal. The Tribunal found that the school had discriminated against Hannah and ordered them to apologise. After the hearing the DRC said: *Hannah's case gives a clear message to all schools - children with health problems need a bit of flexibility so they can join in all school activities without being made to feel like pariahs. A healthy eating policy is to be commended, but it must be flexible so that children who need to eat different foods for medical reasons aren't left out.*

The important message from this and other cases is that a blanket policy is one of the most likely ways in which discrimination might occur.



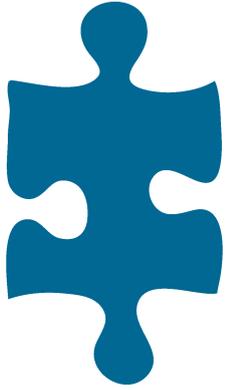
Remedy under Part 3:

- ❑ County Court
- ❑ remedy can include financial compensation

Part 3

Where services are covered by Part 3 of the DDA (providers other than schools):

- a claim of discrimination is heard in the County Court;
- if the Court determines that there has been unlawful discrimination, the remedies available include financial compensation.



Avoiding claims, Parts 3 and 4:

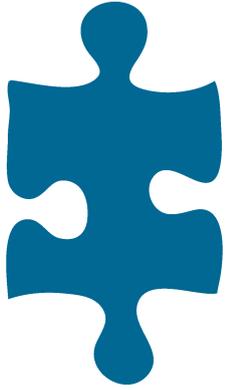
- ❑ complaints to the school or provider
- ❑ conciliation, Disability Rights Commission

08457-622-633

Whether settings are covered by Part 3 or Part 4 they will want to avoid claims to the Tribunal or court cases. Even if something has gone wrong and a setting has discriminated, there are a couple of safety valves in the system.

A well-publicised complaints procedure: may help to resolve a difficulty locally. If a parent has been unable to discuss a difficulty with a member of staff through the normal exchanges between setting and parent, having a visible mechanism for resolving complaints at the level of the setting may help to keep matters local.

Conciliation: If local resolution fails, settings may want to access the conciliation service provided by the Disability Rights Commission. This is available where both the setting and the parents sign up to the process. Conciliation does not affect parents' right to make a claim, rather, where parents agree to conciliation it extends the period during which they can make a claim from 6 months to 8.



Avoiding Discrimination:

- ❑ training
- ❑ reviewing policies, practices and procedures
- ❑ finding out:
 - crucial information
 - handled sensitively
- ❑ getting further help

Here are some positive ways of avoiding claims and complying with the duties in the DDA.

Training: senior staff in all settings need to understand the duties towards disabled children. All staff need to be aware of the duties in the DDA and to understand disability as an equality issue.

Reviewing: a review of policies, practices and procedures should look at all the different areas of the life in the setting, and the admissions policy in particular.

Finding out: information is a crucial part of meeting the DDA duties. Settings need to provide opportunities for parents, and disabled children themselves, to share information. An important part of this will be developing parents' trust that information that they share will be handled sensitively.

Getting further help: a range of services will be available to settings. these vary from area to area, but will include Area SENCOs and SENCO networks, training available through the local EYDCP, special services accessed through the EYDCP, equipment and toy collections for loan, health and social services support, voluntary organisations and parent partnership services.q