

Towards Inclusion – Arts & Disability Information Booklet

August 2003



Foreword

Northern Ireland has more disabled people per head of population than anywhere else in the United Kingdom, estimated at more than 20 percent.

The Arts Council of Northern Ireland, in its five year plan 2001 - 2006, *The Arts, Inspiring the imagination, building the future*, identifies a strategic approach to increasing the quality of access for disabled people to the arts. It seeks, in part, to achieve this through universal accessibility in new venues, increasing the number of disabled people as performers and creators of art and as audience participants, promoting high standards of accessibility in existing venues and developing disability equality training.

To coincide with the European year of Disabled People 2003 the Arts Council has decided to publish this information booklet* which, it hopes, will be of benefit to disabled people and arts organisations.

Roisín McDonough

Chief Executive

Arts Council of Northern Ireland

* Towards Inclusion Arts & Disability Information Booklet is a joint initiative between the Arts Council of Northern Ireland and the Department of Culture, Arts and Leisure.

This information booklet was written by Kevin McLaughlin in association with the Widening Access Team at the Arts Council of Northern Ireland.

Cover Image: Mary Kpakra - *The Canyon*, Etching

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Introduction

Towards Inclusion, Arts & Disability Booklet has been written to promote awareness about disability and the Disability Discrimination Act 1995.

While aimed at disabled people and arts organisations, the Arts Council hopes that it will be of benefit to a larger readership and will go some way toward promoting good customer relations.

A large part of the booklet focuses on the Disability Discrimination Act 1995 and outlines the three component parts of most relevance to arts organisations and venues, namely Definition, Employment Provisions and Access to Goods, Facilities and services.

Other parts of the booklet deal with alternative definitions of disability as promoted by the disability sector and highlights the difference between the medical and social model of disability.

The difference between “Arts and Disability” and “Disability Arts” is explained as is the concept of Disability Culture.

Useful information on publications and contact details for organisations in Northern Ireland is also included.

This publication is available in pdf form on www.artscouncil-ni.org.

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Disability Awareness or Disability Equality?

Many employers and arts organisations seem confused about the difference between Disability Awareness and Disability Equality, particularly when it comes to the issue of staff training.

An easy way of explaining the difference is that Disability Awareness Training tends to focus on the individual and asks:

- a) What is your **problem** (disability)?
- b) How can we **help**?
- c) What are your **special** needs?

Disability Equality Training looks at a rights-based approach to disability thereby changing the focus from the individual onto society and the need for inclusion. Thus:

- a) What are my **responsibilities** as an employer or service provider?
- b) How can I ensure a **fair and inclusive** employment practice / service delivery practice?

Disability Equality Training has been devised by disabled people to help shift thinking toward a more inclusive society. It establishes disability as a rights-based issue; recognises diversity and promotes equality of opportunity.

The Social Model of Disability is a definition that has been created by disabled people collectively to help inform society and lead to a change in practice (a more detailed explanation of the Social Model is included at Page 8).

Susan Hemmings has devised the Sum outlined on Page 4 to help demonstrate that it is society and the way it is structured that leads to disabled people being excluded, and that society, by removing the disabling factor can develop better inclusion.

SUM

IMPAIRMENT

+

DISENABLING FACTOR

= DISABILITY

PERSON WITH IMPAIRMENT

+

EXPERIENCE OF DISENABLING FACTOR

= DISABLED PERSON

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Models of Disability

Over the last 10 to 15 years there has been a move away from the traditional medical view of disability (the Medical Model) to one devised by disabled people themselves (the Social Model) which highlights the need for more inclusive measures.

Page 6 demonstrates the difference between these two models in a fairly simple way but this is explained in greater detail on Page 8.

A very graphic demonstration of the difference can be seen from the article entitled 'My Child' which is written, on the one hand, from the perspective of professionals, and on the other, from family and friends. (see Page 7).

Another very graphic way of highlighting the factors that disabled people experience as a result of social exclusion is by looking at the Social Model diagram on Page 10.

It is interesting that the factors identified as barriers to inclusion of disabled people could just as easily refer to other excluded groups, e.g. ethnic minorities, gender or sexual orientation.

A third model has been identified by John Swain and Sally French, the Affirmation Model, which they feel allows for the recognition of positive social identity and life experience. This is discussed in more detail on Page 9.

An article from the Greater Manchester Coalition of Disabled People entitled 'Sticks and Stones' highlights the terminology disabled people prefer to be used when talking about or describing them. (see Pages 10 & 11).

The final part of Section One explains the difference between Arts and Disability, Disability Arts and introduces the concept of Disability Culture. (pages 11 to 16).

Medical Model Says

You are the problem.

Your disability needs curing.

You can't make decisions about your life.

You need professionals to look after you.

You can never be as equal as a non-disabled person.

Social Model Says

"Disability" is not an individual problem.

We can't compete on equal terms because there are too many barriers.

We need to recognise that "society", (through government and its agencies), has a duty to remove these barriers.

Disabled people have the same **right** to full equality as do all other citizens.

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My child

He shows a moderate developmental delay at two years eight months, with skills falling a little further behind due to a developmental plateau.

- **Kim's a toddler with a great laugh and a lot of energy.**

He is showing a marked developmental regression.

- **Kim tries so hard all the time. He never gives up.**

He has severe intractable epilepsy and will need to be placed in a special school with a special care unit.

- **Kim is an ordinary lad who needs to do ordinary things with all other children his own age.**

He is very passive.

- **Kim is so easy to be with.**

He has autistic tendencies.

- **Kim communicates so beautifully.**

He is often uncooperative.

- **Kim is easy going.**

He can't behave like that. He simply has to stop!

- **I love it when he gets excited. His enthusiasm is so infectious.**

He needs respite care.

- **Kim needs baby-sitters and friends.**

He has frequent seizures. These constitute a major problem.

- **Kim has frequent seizures. They are part of him.**

He has complex communication difficulties.

- **Being with Kim allows me to be myself - to get away from all the peer pressures, and pressures of the world.**

From: Let our Children Be, compiled by Pippa Murray and Jill Penman. (Parents with Attitude c/o 44 Cowlshaw Road, Sheffield, S11 8XF).

The Medical Model

The society we live in considers disability to be a tragedy for the individual and a burden for the family and society. This is based on the 'medical model' of disability. This model focuses on the lack of physical or mental functioning and uses a clinical way of describing an individual's disability. There are developmental norms, and functioning norms against which the person is judged. This model leads to a dehumanising view, where only the nature and severity of the impairment is important, together with the extent to which the difference can be put right or mitigated. It casts the individual as victim.

Disabled people have rejected this model. They say it has led to their low self-esteem, undeveloped life skills, poor education and consequent high unemployment levels. Above all, they have recognised that the medical model requires the breaking of natural relationships with their families, communities and society as a whole.

The Social Model

Disabled people have arrived at a different 'model' to help understand the situation. They are challenging everyone to give up the idea that disability is a medical problem requiring 'treatment', but to understand instead that disability is a problem of exclusion from ordinary life.

This is what is known as the 'social model' of disability, requiring a change in societies values and practices in order to remove the barriers to participation which truly dis-able people. It is clear that this is possible and is starting to happen - e.g. changing steps into ramps, information in braille, valuing different learning styles. The understanding of the social model of disability by non disabled people builds a community of allies that will speed the process towards this attitudinal change. This in turn will have a positive impact on creating a barrier free society that will gain the full benefit of the talents and contributions of all its citizens, i.e. disabled young people will take their rightful place in education, the workforce and all aspects of community life.

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The Affirmation Model

Some disabled people believe that the Social Model of Disability, while identifying how society excludes disabled people, does not allow for positive social identity and life experience. Instead they have put forward a model, the Affirmation Model, which is a non-tragic view of disability and impairment.

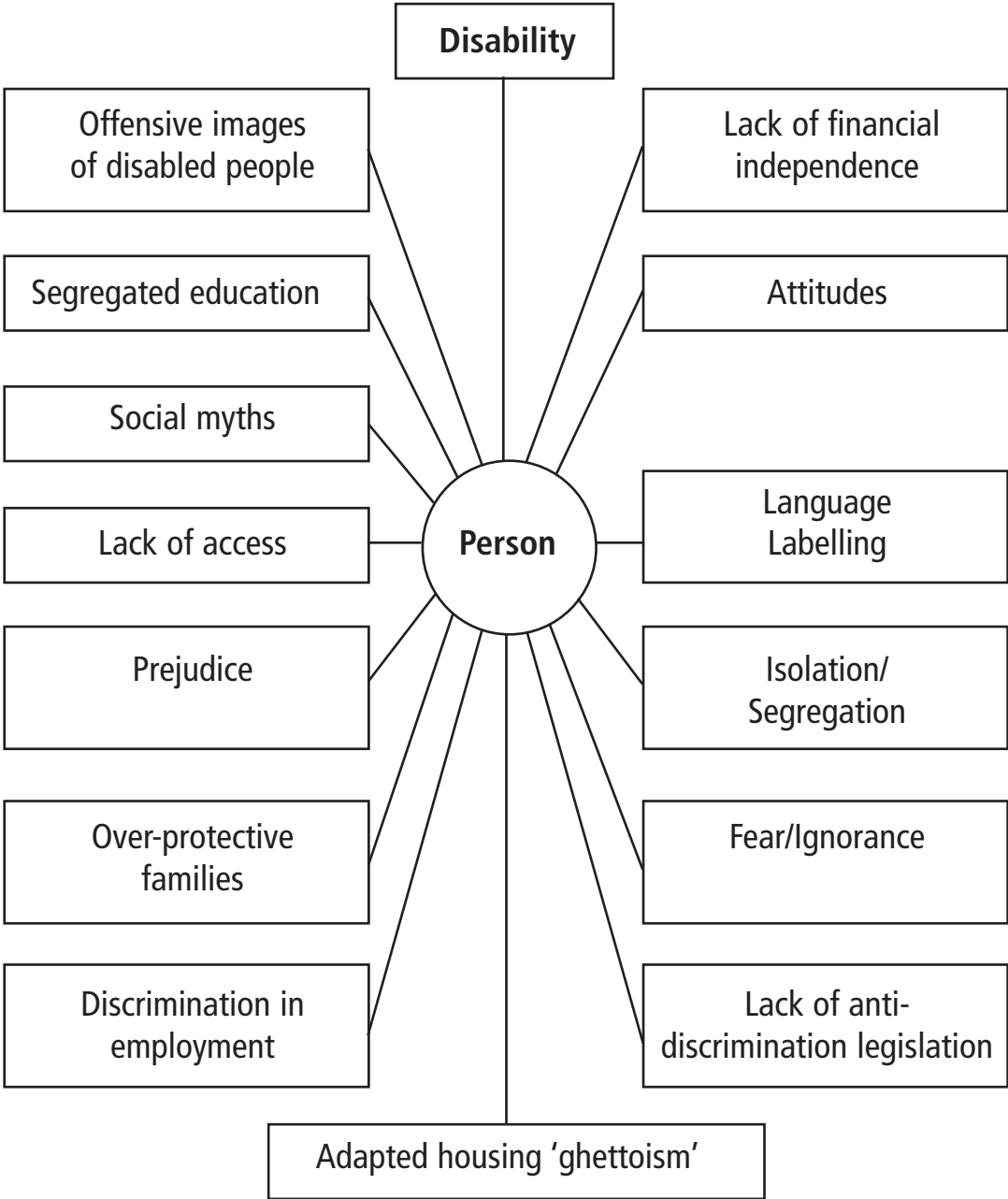
It has its roots in the Disability Arts Movement and Disability Culture and could be represented by the title of Johnny Crescendo's song "Proud, Angry and Strong".

The Affirmation Model is borne of disabled people's experiences as valid individuals, as determining their own lifestyles, culture and identity.

John Swain and Sally French writing about the Affirmation Model in *Disability and Society*, Volume 15, Number 4, 2000, pages 569-582, explain:

"Embracing an affirmative model, disabled individuals assert a positive identity, not only in being disabled, but also being impaired. In affirming a positive identity of being impaired, disabled people are actively repudiating the dominant value of normality. The changes for individuals are not just a transforming of consciousness as to the meaning of 'disability', but an assertion of the value and validity of life as a person with an impairment".

The Social Model



This diagram illustrates the disabling forces at work where the 'Social Model' is applied.

Source: SEATID Edinburgh Taken from: 'Altogether Better' Training Pack.

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Sticks and Stones ... (Disability Terminology)

There are many words and terms used to describe disabled people and disability. Many people argue over which are the correct ones to use. Does it really matter?

Well, disabled people believe that one of the first ways to take control over our lives is by using words, which we want to be described by, and not what others call us.

Many words used to describe disabled people are very old-fashioned and conjure up bad images of us as being helpless and unable to make our own decisions.

For example, we are sometimes described as being 'Cripples' or 'Invalids'. The word 'invalid' also describes things, which have no use such as an 'invalid passport'. As for 'cripple', it is often used in papers or on television to create sad images, e.g. "helpless cripple", or "crippled with pain". Disabled people do not like these words as they don't portray us in a very positive light.

Another word used to describe us by many professionals is 'Handicapped'. Again disabled people don't like this as it refers to disadvantage and doesn't particularly describe disability.

What about 'Special' as in 'Special Needs', 'Special Transport', etc.? Well, this describes putting disabled people in different schools, on different buses and so on because the facilities that non-disabled people use are often not accessible for disabled people. It can mean that decisions are made for us that we shouldn't do the same things that non-disabled people do. This phrase is therefore not used by disabled people as by putting us in this category we are missed out of the activities that the rest of society are doing.

So how can we describe ourselves ...?

Disabled people recognise that we have parts of our bodies, which may not work properly, e.g. we might not be able to see or hear, or may have some type of medical condition. This we describe as '**our impairment**'.

It is not our impairment, which stops us from taking part in all society's activities. Think about it this way:

It is not a wheelchair-user's fault that they cannot get into a building which has steps at the entrance. It is the fault of the design of the building. If a ramp was built the person would be able to get into the building and use its facilities, (as long as its facilities were also accessible to disabled people)!

It is not the disabled person's fault that somebody stares at them because they look different. It is the fault of the person doing the staring that they don't know anything about disability and how disabled people can lead normal lives.

We therefore describe ourselves as 'Disabled People', because we are disabled by society - it is society which won't let us join in, not our individual impairments.

Taken from Greater Manchester Coalition of Disabled People Training Manual : 'Independent Living Skills'.

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Arts and Disability, Disability Arts and Disability Culture

Arts and Disability is a broad term which includes a variety of artwork and methods of involving people with disabilities in the arts. It incorporates people with disabilities as artists, participants and audience members. Arts and disability can be used to describe projects involving collaboration between disabled and able-bodied people (either as artists, participants or as an audience). Arts and disability projects, when collaborative, must involve people with disabilities at all stages of the project from planning to showcasing. Where people with disabilities are placed on the margins or involved on non-disabled terms, projects cannot be endorsed within the practice of arts and disability.

Disability Arts is a specific arts practice which involves artists with disabilities creating work which expresses their identity as disabled people. The work of disability arts practitioners contributes to the expression of a disability culture. It is informed by disabled people's experiences, values and beliefs as disabled people, and by a sense of their identity as members of a distinct group with a unique culture.

The following article by Simon Brisenden on Disability Culture can help to further inform thinking on these issues. (Page 14 -16).

What Is Disability Culture?

An article by Simon Brisenden -
first published by Disability Arts in London Magazine

Some disabled people avoid the issues of disability culture simply because it touches areas of their lives that they would rather not think about. If you have carved out a life against all the odds as an alien in a non-disabled world, you do not want to think too hard about the price you have had to pay.

You may not want to think, for instance, about the world of disabled people, for you now belong to a different world. The idea of a culture of people with disabilities, a set of common experiences and aspirations belonging to us all, seems to undermine everything you have achieved. It seems to threaten the basis upon which you live. If you have struggled and fought to become assimilated, to merge with the majority you do not want this achievement to be knocked: you do not want to be reminded of what you have left behind.

The overwhelming urge to become part of 'normality' leads one to devalue the world of disabled people and to avoid contact with that world. It leads one to avoid like the plague any association with other people with disabilities and their organisations.

The concept of disability culture is deeply threatening to this point of view because it values the lives and experiences of disabled people as important in themselves. More than this, it says that the world of disabled people should be valued on a par with the world of 'disability'.

The idea of disability culture begins with the recognition that we are valuable people in ourselves, and that we need not avoid each other or hide behind a cloak of false integration. We no longer need to build our lives on a denial and devaluing of our background and the experiences of pain and triumph, sadness and joy, which form the reality of our upbringing. Disability culture is being built upon a ruthless honesty about the people we are and the role we play in society.

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Out of the recognition of our value comes the ability to organise ourselves, to put on events, to mobilise our forces, to produce work of art, to run workshops and newsletters and generally to get together and share the common language of our experiences. Only people who value themselves, and listen carefully to their own voices have a culture of their own, rather than a second-hand culture gifted to them as the price of a silent acquiescence to unthinking 'normality'.

So what is disability culture? It is, in general terms, that which is common to our lives and which informs our thoughts and activities. It is our aspirations and our dreams as well as our struggles and our nightmares. It is the things we cannot forget as well as the things we want to remember. It is the schools we went to, the day centres we inhabit, but it is also the art we produce and the organisation we have built. It is so many things but it is no one particular thing.

Many of us have found the idea of disability culture extremely valuable because it has given us the opportunity to share experiences, to come out of the shell of private confusion and into the public world of politics and performance art.

Speaking as a poet it has given me the one thing I wanted above all else - an audience I could identify with. This is true for other artists too, who have been given strength and encouragement by the realisation that the subjects they struggle with are not isolated incidents but have a deeper culture significance.

We now live in a multicultural society and we most proudly take our place alongside the other cultures and lifestyles that are demanding a space to communicate and be themselves. We must learn to relish our differences and not disguise them. We must take control of our lives and our organisations so that we can create a form of politics that is born out of our uniqueness, and which is not led by professionals or other non-disabled people.

The culture of disability comes out of our ghettos as a form of defiance just as it comes out of the ghettos of women, black people and ethnic minority people, gay men and lesbian women. A ghetto is not only a

place of physical degradation, a slum, but can also be a spiritual dungeon, a psychological prison in which the mind is chained and tortured. So it is not just a question of closing down the special schools and the day centres but of opening up our minds to the value of our existence.

We can only work against these mental ghettos by getting together and sharing the common themes of our lives. It can be a thrilling and liberating experience. The culture of disability is the web that binds us together on the basis of what is common but leaves us room to move and grow. It is built upon appreciating and valuing many things, including things that may have been patronised or ignored in the past. For instance, an important element of our culture is our history. We should not wait for the academics to decide this is important, but we must begin charting it ourselves by listening to and recording the reminiscences of older people with disabilities. Their stories are our lost history, a central element of the culture we belong to.

But a disability culture is not only rooted in the proper appreciation of the past; it must also celebrate the present and the future. This sense of celebration and freedom has been strongly in evidence at some of the artistic events that have taken place up and down the country, where audiences and artists have merged together and participated in a collective event arising out of a desire to express themselves. Disability culture is about expressing ourselves in whatever way comes naturally, and about realising that these expressions are valuable.

It is not a question of shutting ourselves off from society, as some people seem to think. On the contrary, we must take our place in society fortified and empowered by the knowledge that we do not need to discard our culture identity as the price of integration.

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SECTION TWO DISABILITY DISCRIMINATION ACT 1995

Introduction

For a number of years disabled people campaigned for the introduction of a Civil Rights Disabled Persons Bill which they felt would counteract the discrimination they faced on a daily basis. Fourteen attempts were made to introduce this act as a Private Members Bill but each of these attempts were unsuccessful. In 1994 the final attempt to introduce this bill was going through its final reading in the House of Parliament but due to various amendments being tabled the motion ran out of time.

Following this many disabled activists took to the street of London to protest about the lack of civil rights and this public outcry led to the government introducing a consultation period on new anti-discrimination legislation. The Disability Discrimination Act of 1995 is the result of the views expressed during this consultation period. Many disabled people have criticised the DDA for not addressing all the factors required to counteract disability discrimination and for using a very narrow, medical definition of disability.

However, it is now law and providers of goods, facilities and services and employers need to be aware of their responsibilities under the Act.

Using the 'social model' of disability helps identify the barriers that exclude disabled people and offers solutions to inclusion. It goes far beyond the definitions expressed in the DDA which are based on the 'medical model' of disability and disabled people feel the Social Model definition should be reflected in the Act. These views have been expressed to the Government who are now looking at amending different sections of the Act.

It needs to be emphasized that the information provided here is for guidance only. More detailed guidance is available from the Disability Unit, Equality Commission of Northern Ireland or the Disability Rights Commission (see contact list for details).

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Component Parts:

Discrimination against disabled persons is prohibited by:

- All employers of 15 or more employees.
- All providers of goods and services (including firms with less than 15 employees) except education and transport services.
- People who rent or sell property, whether for business purposes or accommodation.

Although the Act excludes transport and education from the right of non discrimination in service provision it does:

- Contain extensive provisions paving the way for future regulation of the accessibility of public transport services - taxis, trains and buses.
- Include provisions concerning education (mainly requiring the provision of information regarding the facilities which institutions provide for disabled students).

The government has established a Disability Rights Task Force which have made recommendations as to how the Act can be extended to offer greater protection.

Definitions:

Annex A (Taken from Government booklet: What Employers Need to Know)

Who is protected by the Act?

A disabled person under the Act is anyone with "a physical or mental impairment which has a substantial and long-term adverse effect upon his ability to carry out normal day to day activities". To help explain this concept it can be broken down into its parts:

Physical Impairment: this includes, for instance, a weakening of part of the body (eyes, ears, limbs, internal organs, etc.) caused through illness, by accident or congenitally. Examples would be blindness, deafness, paralysis of a leg and heart disease.

Mental Impairment: this includes a clinically well-recognised mental illness and what is commonly known as a learning disability. Examples would be schizophrenia, manic depression, Down's Syndrome.

Substantial: put simply, this means the effect of the physical or mental impairment on ability to carry out normal day to day activities is more than minor or trivial. It does not have to be a severe effect.

Long term adverse effect: the effect has to have lasted, or be likely to last, overall for at least 12 months and the effect must be a detrimental one. A person with a life expectancy of less than 12 months is, of course, covered if the effect is likely to last for the whole of that time.

A normal day to day activity: this is something which is carried out by most people on a fairly regular and frequent basis, such as washing, eating, catching a bus or turning on a television. It does not mean something so individual as playing a musical instrument to a professional standard or doing everything involved in a particular job.

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What sort of effect must there be?

The person must be affected in at least one of the respects listed in the Act: 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, or perception of risk of physical danger.

What happens if the effects are reduced by medication or other treatment?

Broadly speaking, the effects that matter are those that would be present if there was no medication or treatment taking place. The exception is people who wear spectacles or contact lenses when what matters is the effects that remain while the spectacles or contact lenses are being used.

Are there any types of condition covered by special provisions in the Act?

Yes, because some people with particular conditions might otherwise not be counted as disabled. There are provisions covering:

recurring or fluctuating conditions such as arthritis, where the effects can sometimes be less than substantial, which are treated as continuing to have a substantial adverse effect so long as that effect is likely to recur;

conditions which progressively deteriorate, such as multiple sclerosis, which count as having a substantially adverse effect from the first time they have any effect at all on ability to carry out normal day to day activities even if it is not substantial, so long as there is eventually likely to be a substantial adverse effect; and

severe disfigurements which are treated as having substantial adverse effects on ability to carry out normal day to day activities, even if they have no actual effect at all.

Are any conditions not covered?

Yes, the following conditions specifically do not count as impairments:

- Addiction to or dependency on alcohol, nicotine or any other substance (unless resulting from the substance being medically prescribed);
- Seasonal allergic rhinitis (e.g. hay fever) unless it aggravates the effect of another condition;
- Tendency to set fires, or steal, or physically or sexually abuse other persons; and
- Exhibitionism and voyeurism.

Severe disfigurements consisting of tattoos, non-medical body piercing or attachments to such piercing, are not treated as having substantial adverse effects.

What if someone has recovered from a disability?

Your duties also apply to people who have had a disability in the past, for example someone who was disabled by a mental illness has now fully recovered.

What if I don't know that a person is disabled?

In most cases there will be no question about whether or not someone is disabled. If you are uncertain you can ask for evidence that an impairment gives rise to a disability, especially if the disabled person asks for an adjustment.

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Timetable

- 8 November 1995 - Part I of DDA: Act is passed by Parliament
- 2 December 1996 - Part II of DDA: It became unlawful to discriminate against disabled people in employment.
- Part III of DDA: It became unlawful to refuse to serve a disabled person, provide a lower standard of service or offer less favourable terms to a disabled person, because of their disability.
- It became unlawful to discriminate against a disabled person when selling or letting land or property.
- October 1999 - Second part of Part III implemented:
- Service providers need to amend policies practices and procedures which make it impossible or unreasonably difficult for disabled people to use their services (e.g. restaurants with a 'No Guide Dogs' policy will be in breach of the DDA after October 1999).
- Service providers need to make auxiliary aids and services available to allow disabled people access to their services (e.g. induction loops, minicomms, etc.).
- Service providers based in inaccessible premises have to take reasonable steps to provide their service by alternative means.
- 2004 - Service providers will have to take reasonable steps to remove, alter, or provide

reasonable means of avoiding physical features that make it impossible or unreasonably difficult for disabled people to use a service. They will need to remove or alter physical barriers that prevent disabled people gaining access to premises.

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Employment Provisions

What is discrimination under the Act?

From 1st December 1998, the Act makes it unlawful for employers with 15 or more employees¹ to discriminate against current or prospective employees. Discrimination occurs when, for a reason related to a disabled person's disability, an employer treats a disabled person less favourably than someone to whom that reason does not apply, and the employer cannot show that this treatment is justified. It also occurs when an employer fails to comply with a duty to make a reasonable adjustment in relation to the disabled person, and the failure cannot be justified.

Victimisation is a special form of discrimination covered by the Act. The Act makes it illegal for a person to be treated less favourably than others in the same circumstances because he or she has:

- brought, or given evidence or information in connection with proceedings under the Act (whether or not proceedings are later withdrawn);
- done anything else under the Act;
- or alleged someone has contravened the Act (whether or not the allegation is later dropped); or because he or she is believed or suspected to have done or intended to do any of these things.

When can an employer justify less favourable treatment or failure to make a reasonable adjustment?

Such treatment, or failure, can only be justified if the reason for it is both material to the circumstances of the particular case and substantial. An employer cannot justify less favourable treatment if a reasonable adjustment would remove, or make less substantial, the reason for that treatment.

¹ Previously 20 or more

Is discrimination unlawful in all areas of employment?

Yes. Employers should not discriminate in any area of employment, including recruitment; terms and conditions of service; arrangements made for employees who become disabled (or who have a disability which worsens); opportunities for promotion, transfer, training or receiving any other benefits, or refusal of such opportunities; pensions; dismissal or any other detriment.

What is the duty of reasonable adjustment?

An employer may have to make a reasonable adjustment, if any arrangements made by or on behalf of the employer or any physical feature of the premises occupied by the employer substantially disadvantage a disabled person compared with non-disabled people. An employer has to take such steps as it is reasonable for him or her to have to take in all the circumstances to prevent the arrangements or the feature from having that effect.

'Arrangements' covers:

- arrangements for deciding who should be offered employment, for example the selection and interview process, and the premises used for them; and
- terms, conditions and arrangements on which employment, promotion, transfers, training and other benefits are provided.

An employer is not under an obligation to make an adjustment if he or she does not know, and could not reasonably be expected to know:

- that the disabled person concerned is or may be an applicant for the work in question; or
- that the person has a disability which is likely to place the person at a substantial disadvantage.

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What is a reasonable adjustment?

The Act gives a number of examples of 'steps' which employers may have to take, if it is reasonable for them to have to do so in all the circumstances of the case, to prevent their arrangements or premises placing a disabled person at a substantial disadvantage in comparison with people who are not disabled. These are:

- making adjustments to premises;
- allocating some of the disabled person's duties to another person;
- transferring the person to fill an existing vacancy;
- altering the person's working hours;
- assigning the person to a different place of work;
- allowing the person to be absent during working hours for rehabilitation, assessment or treatment;
- giving the person, or arranging for him or her to be given, training;
- acquiring or modifying equipment;
- modifying instructions or reference manuals;
- modifying procedures for testing or assessment;
- providing a reader or interpreter;
- providing supervision.

Steps other than those listed, or a combination of steps, will sometimes have to be taken.

When is it reasonable for an employer to have to make an adjustment?

The Act lists a number of factors which may, in particular, have a bearing on whether it will be reasonable for the employer to have to make a particular adjustment. These are:

- the effectiveness of the particular adjustment in preventing the disadvantage;
- the practicability of the adjustment;
- the financial and other costs of the adjustment and the

-
- extent of any disruption caused;
 - the extent of the employer's financial and other resources; and
 - the availability to the employer of financial or other assistance to help make an adjustment.

There may be other relevant factors than those listed in the Act.

What about other legislation, such as health and safety law?

You don't have to do anything which would result in your breaching other statutory obligations. You should, however, still consider whether there are alternative reasonable adjustments you could make which don't breach other legislation.

For example, an employer, shortlisting applicants for a junior office position, is considering whether or not to include a blind applicant whom the employer believes might present a safety risk moving around a crowded office space. A reasonable adjustment might be to provide mobility training to familiarise the new employee with the work area, so removing any risk there might otherwise be.

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Part II cases

The following cases demonstrate the types of employment cases that can arise.

DRC/00/049: Depression as reason for withdrawal of offer of employment as care-worker

The client was offered a job as a care worker by a local authority. Although he had a history of mental health problems, he failed to disclose that fact in response to a medical questionnaire. Between accepting the job and starting work, he stopped taking his medication and suffered a severely depressive episode. When the local authority got to hear of that, the offer of employment was withdrawn, notwithstanding the view of the occupational health officer that the client was fit for work. The client brought a disability discrimination claim against the local authority. The local authority for its part denied that the client has a disability. That point has now been tested at a preliminary hearing in the employment tribunal. If the client had won that argument, the substantive claim would have proceeded: the main point at issue would have been whether lack of candour about a disability on the part of a potential employee provides a defence of justification to an employer who subsequently treats that person unfavourably.

Outcome: The employment tribunal found at preliminary hearing that the client was not disabled for the purposes of the DDA because his depression did not have a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

DRC/00/146: Agency worker sacked after 8 weeks sick-leave with cancer

The client, who has cancer, had been contracted to work as a gas sales representative through a job agency. Despite undergoing successful surgery, the client was informed that his employment had been terminated because he had been off work sick for eight weeks. The client has commenced proceedings in the employment tribunal on the basis that he has been discriminated against for a reason connected with his disability and that the agency had failed to make reasonable adjustments

following his illness. The respondent agency has suggested that the client does not have the protection of the DDA in respect of his dealings with the agency which, in its view, never constituted more than a temporary arrangement. The DRC has agreed to provide representation for the client in connection with his pursuit of this technical argument in the employment tribunal.

Outcome: Claim settled to client's satisfaction on the basis that employer pays £5,000 in settlement.

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Part III Cases

The following cases highlight the type of case that can arise under the Provision of Goods and Services:

DRC/00/009: Refusal of admission to restaurant of blind person with guide dog

The client is blind and has a guide dog. He visited a take-away restaurant some time ago and, although there was a facility for consuming food on the premises, he was prevented from doing so because he had his dog with him. The restaurant took the view that the dog posed a health and safety risk. When challenged, the restaurant suggested that it had not realised that the client was blind. As evidence of its disability awareness, the restaurant cited the fact that it provided special tables for wheelchair users and free meals for blind children. There nevertheless seems to be little doubt that the client has been discriminated against for a reason connected with his disability. The situation described is a very common one. If need be, the client's rights under the Disability Discrimination Act will be tested by the commencement of civil proceedings. It would be much more sensible, however, if the dispute could be settled in a manner which makes clear that the restaurant understands the point of principle involved. It has, for example, been suggested that the restaurant might submit to some form of disability awareness training and display a sticker in the window indicating that guide dogs are permitted on the premises. The DRC has entered into negotiations with the restaurant owner, on behalf of the client.

Outcome: Claim settled to the client's satisfaction on the payment by the restaurant of £500, and on its formal agreement to its change of policy on admission of guide dogs being advertised by the display of a sticker in the restaurant window.

DRC/01/3645: Tourist attraction forces disabled client to wait in queue.

A teenager with Asperger's Syndrome visited a major London tourist attraction with his family. His parents had try to arrange for reasonable adjustments prior to their visit but were unsuccessful. Due to his disability he cannot bear to queue and it took some time on arrival to arrange the reasonable adjustment of avoiding the queue for the whole family.

Outcome: After the issue of legal proceedings a meeting was arranged with the teenager's family and the attraction's management. The management learnt about his disability and apologised and provided a free pass to their attractions and a financial settlement. A positive outcome was achieved.

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<p style="text-align: center;">Disability Discrimination Act 1995</p> <p style="text-align: center;">Legislative Framework</p>	<p>Why do we have the Disability Discrimination Act 1995</p> <p>The DDA replaced the Disabled Persons Legislation of 1945 and 1960. This means that:</p> <ul style="list-style-type: none"> • The concept of being "Registered Disabled" disappeared. • The Rights of Disabled people are enforceable in law.
<p style="text-align: center;">Aim of the Act</p> <p>The Disability Discrimination Act aims to:</p> <ul style="list-style-type: none"> • End discrimination • Give disabled people particular rights in the areas of: <ul style="list-style-type: none"> - Employment. - Access to goods, facilities & services. - Education - Public Transport. - The sale or renting of land or property. 	<p style="text-align: center;">Timetable</p> <p>1995 DDA Enacted.</p> <p>1996 Employment provisions.</p> <p>1996 First Access provisions.</p> <p>1999 Reasonable adjustment access provisions.</p> <p>2004 Physical access provisions.</p>
<p style="text-align: center;">Key Provisions of the Act</p> <ul style="list-style-type: none"> • Only protects people who have or have had a disability. • Covers Direct Discrimination and Victimisation. • Does not prohibit more favourable treatment. 	<p style="text-align: center;">The Meaning of "Disability"</p> <p>Physical or mental impairment which has a:</p> <ul style="list-style-type: none"> - substantial, - long term, - adverse effect on ability to carry out normal day to day activities.

<p style="text-align: center;">Physical Impairment</p> <p>This includes sensory impairments such as sight and hearing.</p>	<p style="text-align: center;">Mental Impairment</p> <p>A mental impairment includes: "an impairment resulting from or consisting of a mental illness", but only if "the illness is a clinically well recognised illness". (DDA '95 Section 1, Para 1.1)</p> <ul style="list-style-type: none"> • conditions such as schizophrenia, manic depression, severe and extended depressive psychosis and stress.
<p style="text-align: center;">Conditions not to be treated as an Impairment</p> <ul style="list-style-type: none"> • Addictions to non-medically prescribed substances. • Voyeurism. • Exhibitionism. • Hay fever. • Tattoos. • Pyromania. • Body Piercing. • Kleptomania. 	<p style="text-align: center;">Meaning of Substantial</p> <ul style="list-style-type: none"> • More than minor or trivial. • Severe disfigurement. • Controlled/corrected by medication. • Progressive condition.
<p style="text-align: center;">Long Term</p> <ul style="list-style-type: none"> • Has lasted at least 12 months. • Is likely to last at least 12 months. • Remainder of the life of the person affected. 	<p style="text-align: center;">Ability to carry out Normal day to day Activities</p> <ul style="list-style-type: none"> • Mobility. • Ability to lift, carry or otherwise move every day objects. • Manual Dexterity. • Physical Co-ordination. • Speech, hearing or sight. • Contenance. • Perception of risk or physical danger. • Learning/Understanding.

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<p style="text-align: center;">How can we discriminate</p> <ul style="list-style-type: none"> • Less favourable treatment. • Failure to consider reasonable adjustments. 	<p style="text-align: center;">Reasonable Adjustment</p> <p>Reasonable steps to change practice, policies and procedures, which make it impossible or unreasonably difficult for disabled people to use a service.</p> <p>Failure to make reasonable adjustments without justification will constitute discrimination.</p>
<p style="text-align: center;">What is Reasonable?</p> <ul style="list-style-type: none"> • Effectiveness. • Practicability. • Cost. • Disruption. • Service Providers resources. • Resources already spent on adjustments. • Availability of assistance. 	<p style="text-align: center;">Reasonable Adjustment Duty (From October 1999)</p> <ul style="list-style-type: none"> • Affects anyone providing a service to the public – free or for a fee – except: <ul style="list-style-type: none"> education vehicles private clubs manufacturers
<p style="text-align: center;">3 Elements to Reasonable Adjustment Duty</p> <p>Where reasonable, the service provider must:</p> <ul style="list-style-type: none"> • Change policies, procedures and practices. • Provide auxiliary aids and services. • Overcome physical features. 	<p style="text-align: center;">What duties already apply to service providers?</p> <p>With effect from 2nd December 1996, service providers have had a duty not to:</p> <ul style="list-style-type: none"> • refuse service to a disabled person. • offer a worse service. • offer a service on worse terms. for a reason related to the person’s disability.

<p style="text-align: center;">Lawful Discrimination</p> <ul style="list-style-type: none"> • Health & Safety. • Legal consent or informed consent. • If providing the service to the disabled person meant that the provider of services would be unable to provide the service to other members of the public 	<p style="text-align: center;">Overcoming Physical Features</p> <ul style="list-style-type: none"> • Remove physical Features 2004 • Alter physical features 2004 • Avoid physical features 2004 • Provide services by a reasonable alternative means 1999
<p style="text-align: center;">What does this mean to us?</p> <p>As an organisation which provides services to the public, we must:</p> <ul style="list-style-type: none"> • Carry out an access audit. • Put in place action plans. 	<p style="text-align: center;">Summary</p> <p style="text-align: center;">In conclusion please remember:</p> <p>We are all accountable for the successful implementation of this Act. We must:</p> <ul style="list-style-type: none"> • think laterally. • be flexible. • keep an open mind.

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Some useful suggestions

Most people want to treat disabled employees, job applicants and customers the same way as everyone else but aren't always sure how to go about it.

These suggestions are not part of the new law but they may be useful when you meet disabled people.

Disabled people are individuals just like everybody else. Do not make assumptions about their abilities or needs. Do not forget there are hidden disabilities such as epilepsy and mental illness.

If you are not sure how something might affect a disabled person, ask them for advice.

Communication

If a disabled person is with someone, talk to the disabled person directly, not to the person who is with them. This also applies to a deaf person accompanied by a sign language interpreter.

When talking to a deaf person, find out - if necessary in writing - whether they lip-read. If they do, make sure your face is in the light, look directly at the person, speak clearly and naturally, remembering to keep your hands away from your face.

When you first meet a blind person, introduce yourself. When you are going to move away, tell them. Do not leave them talking to an empty space.

When you are talking to someone with a speech impairment, concentrate on what is being said, be patient and do not try to guess what they want to say. If you do not understand do not pretend you do.

If someone has difficulty understanding you - perhaps because

they have a learning disability - be patient and be prepared to explain something more than once. Concentrate on using simple language.

When talking to a wheelchair user, try to ensure that your eyes are at the same level as theirs, perhaps by sitting down. Do not lean on the wheelchair - it is part of the user's personal space.

Avoid asking personal questions about a person's disability such as 'Were you born like that?' But an employer could ask, 'Does your disability affect your ability to do this job?'

If someone looks 'different', avoid staring. Concentrate on what they are saying not on the way they look.

If you are talking to an adult, treat them like an adult.

Assistance

If someone looks as if they need assistance, offer it, but wait for them to accept before you help.

When guiding a blind person do not push or pull them. Ask if they would like to take hold of your arm. If there are any steps tell them whether the steps go up or down.

Remember that guide dogs for blind people, hearing dogs for deaf people and other assistance dogs, are working dogs, not pets. They should not be fed, patted or distracted when they are working.

Above all put yourself in the disabled person's place. Most of the above points are just good manners.

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Language

Some of the words and phrases we use offend disabled people, because they suggest that the disabled person is dependent or helpless. Some words such as 'cripple' or 'retarded' have become terms of abuse or are used to make fun of disabled people. Overleaf are some common words to **avoid**, together with some suggested alternatives.

Do not say

the disabled

suffering from / crippled by /
afflicted by / a victim of

deaf and dumb

an epileptic

spastic

mentally handicapped / subnormal

confined to a wheelchair /
wheelchair bound

Use

disabled people / people with
disabilities

a person who has / a person
with

deaf without speech

a person with epilepsy

a person with cerebral palsy

a person with a learning
disability

a wheelchair user

Issued on behalf of the Minister for Disabled People
Prepared in conjunction with the National Disability Council and RADAR

Appendix A

Useful Publications

The Government produces information on the Disability Discrimination Act in a range of formats. (All are free.) Contact the Disability Rights Commission.

Telephone: 0845 7622 633
Text Phone: 0845 7622 644
Fax: 0845 7778 878
Website: www.drc-gb.org

Arts Organisations and Rights of Access to Goods, Facilities and Services, Part III of the Disability Discrimination Act 1995 is available (free) from the Information Service Department, Arts Council of England, 14 Great Peter Street, London SW1P 3NQ. Please specify the format you require (large print, audio tape, disk or Braille).

Telephone: 020 7333 0100
Minicom: 020 7973 6564
Fax: 020 7973 6590
Website: www.artscouncil.org.uk

Codes of Practice on the Employment and Services provisions of the Disability Discrimination Act is the official guidance which will be referred to by the courts. Available from HMSO.

Telephone: 020 7242 6393
Minicom: 087 0240 3701
Fax: 020 7242 6394

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Useful Contact Telephone Numbers

Arts Council of Northern Ireland 028 90 385200

Arts & Disability Forum 028 90 239450

ADAPT NI 028 90 231211

Disability Action 028 90 297880

Drake Music 028 30 264294

Employers Forum on Disability 020 7 403 3020

Equality Commission of Northern Ireland 028 90 500600

Open Arts 028 90 312515

RADAR 020 7 250 3222

Arts Council of Northern Ireland

**MacNeice House
77 Malone Road
Belfast BT9 6AQ
Telephone: 028 9038 5200
Fax: 028 9066 1715
Textphone: 0800 515152
Web: www.artscouncil-ni.org**

