



South Sefton Clinical Commissioning Group
Southport and Formby Clinical Commissioning Group

Reasonable Adjustment and Disability

A guide to good practice for CCGs

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1. Introduction: reasonable adjustments, disability and CCGs

Clinical commissioning groups (CCGs) commission most of the hospital and community NHS services in the local area for which they're responsible.

NHS South Sefton CCG and NHS Southport and Formby CCGs have public engagement and involvement activities that member so the public can participate in. Activities range from providing simple feedback via questionnaires, to consultations and public events held by your CCG, such as Big Chats. It is essential that everybody who make up or diverse population can participate in CCG involvement activities irrespective of their age, disability, religion and belief, sex, sexual orientation and race.

This guide is to support NHS CCG staff to support disabled people to participate and get involved in CCG activity and act as a guide for disabled people who want to participate, on what support they can expect.

You can find details about how to get involved with your CCG website or you can contact them directly by using the details at the end of this guide.

The statutory duty, within the Equality Act 2010, is to make reasonable adjustments this requires CCGs to take positive steps to ensure that disabled people can access services and get involved in commissioning activity. The Reasonable Adjustment duty goes beyond simply avoiding discrimination. It requires CCGs to **anticipate the needs** (including their information and communication needs) of potential disabled population.

The goal of the duty to make reasonable adjustments is to ensure that access to a provision or service (involvement, engagement and consultation activity) comes as close as it is reasonably possible to get to the standard normally offered to the public at large.

The question of the reasonableness of an adjustment is an objective one for the courts to determine.

CCGs should bear in mind that there are no hard and fast solutions. Action which may result in reasonable access to services being achieved for some disabled people may not necessarily do so for others.

2. The duty to make reasonable adjustments comprises three requirements; one or all of them may apply

A) Changing how things are done:

The law says: *where a provision, criterion or practice puts disabled persons at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as are reasonable to avoid the disadvantage.*

This means:

A CCG might have a provision, criterion or practice which – perhaps unintentionally – places disabled people at a substantial disadvantage in using or accessing that service or event. The CCG must take such steps as it is reasonable for them to have to take, in all the circumstances, to change the provision, criterion or practice so that it no longer has such an effect. This may simply mean instructing staff to waive a criterion, amending a practice to allow exceptions, or abandoning it altogether. Often, such a change involves little more than an extension of the courtesies which most CCGs and service providers already show to their patients.

Example:

CCG 'Any town' wants to support a local visually impaired Healthwatch representative to access Governing Body agendas and minutes and has worked through the [5 steps of the Accessible Information Standard](#) and the [top 10 tips on accessible communication](#) to ensure the reps information and communication needs are flagged and met.

B) Changing a physical feature:

The law says: *where a physical feature puts disabled persons at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage or adopt a reasonable alternative method of providing the service or exercising the function (by removing it, altering it or providing a reasonable means of avoiding it). Example: Providing ramp access to your premises/providing disabled parking bays.*

So we need to remove physical features that cause problems where ever possible. Removing the physical feature may be a reasonable step, and the most effective one, for a service to take.

Physical features of a building or premises include:

- any feature arising from the design or construction of a building;
- any feature on the premises of any approach to, exit from, or access to a building;
- any fixtures, fittings, furnishings, furniture, equipment in or on premises; and
- any other physical element or quality

Physical features include steps, stairways, kerbs, exterior surfaces and paving, parking areas, building entrances and exits (including emergency escape routes), internal and external doors, gates, toilet and washing facilities, public facilities (such as telephones, counters or service desks), lighting and ventilation, lifts and escalators, floor coverings, signs, furniture, and temporary or movable items (such as equipment and display racks). Physical features also include the sheer scale of premises (for example, the size of a shopping centre). This is not an exhaustive list.

To ensure that buildings and venues are accessible for events please use the [Engaging with disabled people and event planning guide](#) developed by the Equality and Human Rights Commission.

The Act requires that any means of avoiding the physical feature must be a 'reasonable' one. Relevant considerations in this respect may include whether the provision of the service in this way significantly offends the dignity of disabled people and the extent to which it causes disabled people inconvenience or anxiety.

Example:

The entrance to a public event on diabetes is up a flight of stairs. At ground level there is a bell and a sign saying 'Please ring for disabled access'.

However, the bell is not answered promptly, even in bad weather, so that a disabled person meeting officials has to wait for an unreasonable amount of time before gaining access to the building. This is unlikely to be a reasonable means of avoiding the feature.

Where the substantial disadvantage caused by a physical feature cannot be avoided, service providers should consider whether there is a reasonable alternative method of making services or access available to disabled people. The Act requires that any alternative method of making services available must be a 'reasonable' one. Relevant considerations in this respect may include whether the provision of the service in this way significantly offends the dignity of disabled people and the extent to which it causes disabled people inconvenience.

Example:

The changing facilities in an x-ray department are located in a room that is only accessible by stairs. The service provider suggests to disabled users with mobility impairments that they can change in a corner of the x-ray room itself. This is unlikely to be a reasonable alternative method of making the service available, since it may significantly infringe on their dignity.

Where there is a physical barrier, the service provider's aim should be to make its services accessible to disabled people and, in particular, to provide access as close as it is reasonably possible to get to the standard normally offered to the public at large. When considering which option to adopt, service providers must balance and compare the alternatives in light of the policy of the Act, which is, as far as is reasonably practicable, to approximate the access and services enjoyed by disabled persons to that enjoyed by the rest of the public.

If a service provider decided to provide a service through an alternative method, and a disabled person brought a claim against them for a failure to make reasonable adjustments, the court determining the claim would be able to consider the other options which the service provider **could have** adopted to avoid the substantial disadvantage to the disabled person.

C) Providing an auxiliary aid:

The law says: where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid (NB: an auxiliary aid includes an auxiliary service).

An auxiliary aid is something or someone that helps a person to access and use a service – it could be a hearing induction loop, a wheel chair, a signer or a helper to help someone needing support, a private cubical, an adapted toilet all going to help access and move through a service.

The service user must not be charged for this support or use of aid whilst using the service.

3. What disadvantage must a person have before the duty applies?

The Act states that disadvantage must be 'substantial', however, substantial is defined as **more than minor or trivial**. This is in effect quite a low test and providers must keep this in mind – it's not difficult to find oneself in a situation that gives rise to more than a minor or trivial concern.

The disadvantage created by the lack of a reasonable adjustment is measured **by comparison** with what the position would be if the disabled person in question did not have a disability.

No two disabled people are the same, so this will obviously depend largely upon the precise disability suffered. Anything that is more than minor or trivial is a substantial disadvantage and it seems likely that the following things might be considered:

- Time
- Inconvenience
- Effort
- Discomfort
- Anxiety or loss of dignity

4. Who is covered by the act?

In relation to services and public functions, the duty to make reasonable adjustments is owed to disabled people generally. It is not simply a duty that is weighed in relation to each individual disabled person who wants to get involved with the CCG or who is affected by the exercise of a public function or service.

It is an anticipatory duty: In relation to all areas of activity, the duty is anticipatory in the sense that it requires consideration of, and action in relation to, barriers that impede people with one or more kinds of disability prior to an individual disabled person seeking to use the service.

CCGs should therefore not wait until a disabled person wants to use a service that they provide before they give consideration to their duty to make reasonable adjustments. They should anticipate the requirements of disabled people and the adjustments that may have to be made for them. Failure to anticipate the need for an adjustment may create additional expense, or render it too late to comply with the duty to make the adjustment. Furthermore, it may not in itself provide a defence to a claim of a failure to make a reasonable adjustment.

Example:

A person with a visual impairment regularly receives printed information on CCG project and when, despite the fact that on previous occasions she has indicated her need for Braille.

The person finds this repeated need to telephone to ask for Braille frustrating and inconvenient, but is told that the software, which generates communications, does not enable a record to be kept of customers' needs for alternative formats.

This may constitute a failure to make reasonable adjustments if it is judged to have left the disabled person at a substantial disadvantage in participating and there was a reasonable adjustment that could have been made.

Accessible information

The Act states that where the provision, criterion or practice, or the need for an auxiliary aid or service, relates to the provision of information, the steps which it is reasonable to take include steps to ensure that the information is provided in an accessible format.

The NHS has an [accessible information standard](#) and as part of the accessible information standard, organisations that provide NHS or adult social care must do five things. They must:

1. Ask people if they have any information or communication needs, and find out how to meet their needs.
2. Record those needs clearly and in a set way.
3. Highlight or flag the person's file or notes so it is clear that they have information or communication needs and how to meet those needs.
4. Share information about people's information and communication needs with other providers of NHS and adult social care, when they have consent or permission to do so.
5. Take steps to ensure that people receive information which they can access and understand, and receive communication support if they need it.

Our staff have a number of tools to support them to meet the information and communication needs of disabled people including [top 10 tips](#) and [5 steps to accessible information](#).

5. Does the duty to make reasonable adjustments apply even if the service provider does not know that the person is disabled?

Because this is a duty to disabled people at large, it applies regardless of whether the CCG knows that a particular person is disabled or whether it currently has disabled customers. CCG staff therefore have to ask for information. If a disabled person does not reveal their disability, and it is not obvious, then no adjustment can be made.

Must CCGs anticipate every barrier?

CCGs are not expected to anticipate the needs of every individual who may use their service, but what they are required to think about and take reasonable steps to overcome are barriers that may impede people with different kinds of disability. For example, people with dementia, mental health conditions or mobility impairments may face different types of barriers.

Disabled people are a diverse group with different requirements – for example, visually impaired people who use guide dogs will be prevented from using services with a ‘no dogs’ policy, whereas visually impaired people who use white canes will not be affected by this policy. The duty will still be owed to members of both groups.

Once the CCG has become aware of the requirements of a particular disabled person who uses or seeks to use its services, it might then be reasonable for the CCG to take a particular step to meet these requirements. This is especially so where a disabled person has pointed out the difficulty that they face or has suggested a reasonable solution to that difficulty.

Example:

A disabled person at an event experiences a flare-up of their medical condition, as a result of which they would have experienced severe back pain when sitting on the hard chairs provided in room. Despite the lack of notice, those organising the event were able to find a more suitable chair and make this available to the person.

Disability can cover:

Mobility, manual dexterity, continence, physical co-ordination, speech, hearing or eyesight, memory or ability to learn, concentrate or understand, perception of risk of physical danger and the ability to lift, carry or move everyday objects are all ‘capacities’ which might be affected for the purposes of establishing that a person is

disabled. It is worth noting that someone who is temporarily 'disabled' (e.g. has broken their arm/leg) will not be a disabled person for the purpose of the Act. Others, e.g. those with cancer, the blind or severely sight impaired, are 'deemed' to be disabled.

How long does the duty continue?

The duty to make reasonable adjustments is a continuing duty. CCGs should keep the duty and the ways they are meeting the duty under regular review in light of their experience with disabled people wishing to access their services. In this respect it is an evolving duty, and not something that needs simply to be considered once only, and then forgotten. What was originally a reasonable step to take might no longer be sufficient, and the provision of further or different adjustments might then have to be considered.

6. What is meant by 'reasonable' steps?

The duty to make reasonable adjustments places CCG's under a responsibility to take such steps as it is reasonable, in all the circumstances of the case, to have to take in order to make adjustments.

The Act does not specify that any particular factors should be taken into account. What is a reasonable step for a particular CCG to have to take depends on all the circumstances of the case. It will vary according to:

- the type of involvement method being offered or provided ;
- the effect of the disability on the individual disabled person.

However, without intending to be exhaustive, the following are some of the factors which might be taken into account when considering what is reasonable:

- Whether taking any particular steps would be effective in overcoming the substantial disadvantage that disabled people face in accessing involvement activity ;
- The extent to which it is practicable for the CCG to take the steps;
- The financial and other costs of making the adjustment;
- The extent of any disruption which taking the steps would cause;
- the availability of financial or other assistance.

Is every possible adjustment a reasonable one to make?

Not necessarily.

Health and safety may be a factor which will mean that a possible adjustment is not 'reasonable' on every occasion. The nature of the disability will also be very relevant to the reasonableness of any adjustment.

Example:

Converting one toilet/entrance for disabled access - it is not necessary to alter every toilet/entrance

Example:

A disabled service user with severe arthritis is queuing in a busy GP practice to make an appointment. He experiences pain if he has to stand for more than a couple of minutes. Other customers would not expect to have to undergo similar discomfort in order to make an appointment. Thus, the GP's queuing policy places the disabled customer at a substantial disadvantage. Consideration will have to be given as to how the queuing policy could be adjusted so as to accommodate the requirements of such disabled customers.

Depending on the GP surgery staff could ask the service user to take a seat and then serve him in the same way as if he had queued. Alternatively, it might provide a separate service desk with seating for disabled customers.

7. Are there any limits on the duty to make reasonable adjustments?

Where the duty to make reasonable adjustments arises, CCGs cannot justify a failure to make a reasonable adjustment. However, the Act does place specific restrictions on the duty in relation to service providers, those exercising public functions and associations. A service provider will not be required to take any steps which would fundamentally alter the nature of the service or the nature of the provider's trade or profession.

Those exercising public functions will not be required to take any steps which are outside their powers.

The purpose of taking the steps is to ensure that disabled people are not placed at a substantial disadvantage compared with non-disabled people. Where there is an adjustment that the CCG could reasonably put in place and which would remove or

reduce the substantial disadvantage, it is not sufficient for the CCG to take some lesser step that would not render the service in as accessible a manner.

Similarly, a CCG will not have taken reasonable steps if they attempt to provide an auxiliary aid or service which in practice does not help disabled people.

If, having considered the issue thoroughly, there are genuinely no steps that it would be reasonable for a CCG to take to make its services or activity accessible, the CCG is unlikely to be in breach of the law if it makes no changes. Such a situation is likely to be rare.

8. What happens if the duty to make reasonable adjustments is not complied with?

Where a CCG does not comply with the duty to make reasonable adjustments in the circumstances outlined here, it will be committing an act of unlawful discrimination. A disabled person will be able to make a claim based on this.

9. Reasonable adjustments in practice

When a CCG is considering making reasonable adjustments, the following measures may be helpful and constitute good practice that may help avoid acts of discrimination. In some circumstances, they may either be a means to identify reasonable adjustments or actually constitute reasonable adjustments themselves:

- planning in advance for the requirements of disabled people and reviewing the reasonable adjustments in place
- conducting access audits on premises
- asking disabled people for their views on reasonable adjustments;
- consulting local and national disability groups
- drawing disabled people's attention to relevant reasonable adjustments so they know they can use the service
- Properly maintaining auxiliary aids and having contingency plans in place in case of the failure of the auxiliary aid
- Training employees to appreciate how to respond to requests for reasonable adjustments
- encouraging employees to develop additional serving skills for disabled people (for example, communicating with hearing impaired people); and ensuring that

employees are aware of the duty to make reasonable adjustments and understand how to communicate with disabled customers so that reasonable adjustments can be identified and made

- Ensuring that equality analysis are done on commissioning work to identify barriers for people with disabilities and to ensure service providers meet these needs as part of their contract specification

For further advice on anything within this guide please use the contacts in section 11 on page 19.

10. Access and Inclusion Resource Kit: adapting services and activities checklist

The aim of this checklist is to assist project management to identify whether existing services need to be adapted to meet the needs of people with disability, their families and carers.

Examples

In order to determine whether CCG needs to adjust their activity CCG's and NHS service providers need to consider the following:

- use regular customer feedback processes to provide opportunities for people with disability to comment on the degree to which their access needs are met
- ensure that, when formal reviews and evaluations of services are undertaken, feedback is sought from interested parties including staff to assess whether services need to be modified to better meet the access needs of people with disability.
- providing a contact point within the organisation for people with disability, their families and carers to discuss their access issues and needs.

Reasons for checklists

Activities provided by CCGs are unique both in terms of what it delivers and how it is delivered. Whether it needs to be adapted will depend on the service or activity, the way it is delivered and the people with disability, their families and carers who use the service' – so the onus is on the commissioner/service provider to find out disability needs of service users.

CCG's may need to change policies, procedures and practices to allow for a more flexible approach in providing activities to people with disability. Feedback and advice from people with disability, their families and carers, the organisations concerned with disability issues and staff who provide the service is essential and will assist when deciding what needs to be changed and how.

Using this checklist

The questions in this checklist focus on whether existing services and activities need to be adapted to provide appropriate access and participation. This may be done by considering what processes are in place to provide feedback opportunities for people with disability, their families and carers, the organisations that support them and staff within your organisation who may serve them.

It is important to remember that some people do not consider themselves to be a “person with disability”. It may, however, be hard for them to walk, hear and see and therefore participate in the activities and services provided by your organisation.

It is often more appropriate to focus on the practical difficulties people may be experiencing rather than on the kind of disability they have. Support can be given to CCGs to help them understand this process.

Feedback should be incorporated into the Issues and Action sheets of the relevant checklists. For example, if, through a customer survey, feedback identifies that there are difficulties with physical access to events then this should be acted upon. If, however, feedback suggests that changes need to be made to the way the activities is delivered and requires a change, then this should be included in the Action Sheet for this checklist.

Adapting services checklist

Service: _____

Date: _____

Assessor _____

	Yes	No
1. Are opportunities provided for people with disability, their families, carers, relevant organisations and staff within your organisation to provide feedback on this service?	<input type="checkbox"/>	<input type="checkbox"/>
2. How are these opportunities provided?	<input type="checkbox"/>	<input type="checkbox"/>
Through regular customer feedback processes	<input type="checkbox"/>	<input type="checkbox"/>
Through client feedback surveys	<input type="checkbox"/>	<input type="checkbox"/>
Through formal reviews and evaluations	<input type="checkbox"/>	<input type="checkbox"/>
Through complaints mechanisms	<input type="checkbox"/>	<input type="checkbox"/>
Through feedback from and consultation with staff	<input type="checkbox"/>	<input type="checkbox"/>
Through public consultation and engagement processes	<input type="checkbox"/>	<input type="checkbox"/>
Through contact with EPEG	<input type="checkbox"/>	<input type="checkbox"/>
Through a contact person within the organisation	<input type="checkbox"/>	<input type="checkbox"/>
Other (please list): _____ _____ _____ _____		

	Yes	No	N/A
3. Do these feedback processes provide opportunities for people to comment on the following?			
Access to buildings, facilities and events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access to information and communication	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
How well staff have provided the service or activity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access to public participation processes (e.g., grievance, quality assurance, consultation and decision-making processes) (e.g., grievance, quality assurance,	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Any feedback on changes required for items listed above should be listed on the Issues and Actions sheet for the relevant access checklists.			
Other aspects of the activity or service that need to be adapted/ modified to ensure that people with disability can use adapted/modified to and benefit from this service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Any feedback on changes required for the item listed above should be listed on the Issues and Actions sheet for the relevant access checklists.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	yes	no
4. As a result of feedback on this service do policies, procedures, guidelines or administrative arrangements need to be changed? Please list the changes required under the Action Column of the Issues and Actions sheet for this checklist.	<input type="checkbox"/>	<input type="checkbox"/>
5. If this activity or service is to be contracted out (for example to Healthwatch or the CSU) , does the contract governing the provision of this service include a clause requiring the access needs of people with disability to be met?	<input type="checkbox"/>	<input type="checkbox"/>

Issues and actions

The preceding checklist identified a number of issues. Where you have answered “No” this may identify areas for consideration. This table is intended to provide a summary of actions that will increase or improve access for people with disability

Issues	Action	Responsibility	Timeframe for achievement	Issues identified in Equality Analysis report or service specification? Link to key policies and plans such as the EPEG work, engagement strategy etc (Yes/No)

11. Useful contacts

Queries about this guide, advice and support

If you have any questions about anything in this guide please contact andy.woods3@nhs.net

How to get involved in your local NHS

You can find out more about how to get involved in the work of NHS South Sefton CCG and NHS Southport and Formby CCG by,

Visiting their websites:

NHS Southport and Formby CCG – www.southportandformbyccg.nhs.uk

NHS South Sefton CCG – www.southseftonccg.nhs.uk

Contacting your CCG directly:

NHS Southport and Formby CCG - 5 Curzon Rd, Southport, PR8 6PL
telephone: 01704 395785 / email: southportandformby.ccg@nhs.net

NHS South Sefton CCG - Merton House, Stanley Road, Bootle, L20 3DL
telephone: 0151 317 8456 / email: southsefton.ccg@nhs.net



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On request this report can be provided in different formats, such as large print, audio or Braille versions and in other languages by simply using the contact details for your CCGs on page 19.