

Adjustments made for Deaf Disabled Clients

The legal position is that the Disability Discrimination Act 1995 (DDA) places an obligation on service providers to make reasonable adjustments so that they can assist any client who has a disability. This includes physical adjustments to premises as well as one-off capital costs for hearing loops or text phones etc. The provision for and costs of sign language interpretation for clients on a continuing basis during a case has become contentious.

It is clear from the Act that it is the supplier, as service provider, who is obliged to provide a sign language interpreter for clients who are deaf or hard of hearing, where it would be a reasonable adjustment to make. Reasonable adjustments, by way of provision of an auxiliary aid or service like BSL interpretation or other Language Support Professionals, are dependant on the circumstances of the client and also the resources of the supplier. The Code of Practice states that 'the type of auxiliary aid of service will vary according to the importance, length, complexity and frequency of the communication involved'.

Any charges incurred by the provider for such adjustments cannot be passed on to the client. This was confirmed in the case of Yvonne Brooks, which clarified that such charges were to be borne by the supplier and not to be passed onto the deaf client. The recent Focus 47 article 'Interpreters and the DDA' set out the consequences of that judgement.

The Commission accepted following publication of that article that there may be circumstances in which the provision of sign language interpreters cannot be considered a reasonable step under the Act. For such cases, the Commission assured professional bodies and representative groups that it would meet such costs (as unreasonable adjustments) to ensure there was no gap in service provision for these vulnerable clients.

Agreement as to the exact point at which the adjustment became unreasonable due to the resources of the supplier was not reached. Any guidance on the point at which the charge would or would not be met by the Commission, or borne by the supplier, would of necessity involve solicitors justifying the unreasonableness of the expense to the Commission. The Commission considered that this might risk a future gap in provision if solicitors were unwilling to provide the justification required.

In light of preparations for the public duty to promote disability equality to come into force in January 2007, the Commission will now bear both the 'reasonable and unreasonable' adjustment costs so that deaf clients are not denied access to language support where appropriately employed and where reasonable in amount.

As well as the cost of English/British Sign Language interpretation we will pay the reasonable cost of other Language Support Professionals (LSP), such as Speech to Text Reporters, Lipspeakers and DeafBlind Manual Communicators, if the engagement of such professionals is reasonable and necessary to communicate effectively with the particular disabled client. Further guidance may be developed on this

No agreement has been reached as to the reasonable hourly rate for these costs. The Commission will be consulting shortly on what is a reasonable amount to expect it to pay.

The DDA however prohibits such costs from being passed onto the client and therefore, in supporting this change and facilitating reimbursement, it is imperative that suppliers ensure they keep a separate breakdown of such costs and the associated increased attendance times on the client (the Brooks case suggested this may be between 20 & 30%) so that the costs of the BSL/LSP and increased attendance can be deducted from the calculation of any statutory charge. Initially this information will need to be provided by way of covering letter or annotation of the claim form until the claim forms can be amended. The Commission will need to consult with judges as to the correct approach on assessment.

This change will take effect immediately and the requested calculation will be sought for all costs claims submitted or in the process of being assessed from this point onwards.

Practitioners may locate the guidance on providing sign language interpretation jointly produced by RNID and the Disability Rights Commission at www.rnid.org.uk after entering guidance on BSL into the search field.

Any queries on the Commission's approach may be addressed to Ruth Symons, Corporate Legal Team 0207 759 0000 or by email to ruth.symons@legalservices.gov.uk.