



BAR COUNCIL EQUALITY & DIVERSITY GUIDES REASONABLE ADJUSTMENTS

This document aims to help chambers by providing additional information to support existing content on reasonable adjustments in the [BSB Supporting Information Guide](#) (Section 13).

We provide further detail on reasonable adjustments and a sample policy.

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INTRODUCTION

- A. You have legal and regulatory duties to make adjustments for persons with disabilities so that their experience of your service is as close as possible to what a person without a disability would experience.
- B. The aim of making reasonable adjustments in whatever context is to ensure that the experience of the person with a disability who is either a service user, applicant for pupillage, pupil, tenant or employee is as close as possible to that of a person without a disability in those situations.

- C. When considering how to make provision that aim should be borne centrally in mind.

THE LAW & REGULATORY REQUIREMENTS

1. All barristers' chambers are required to make reasonable adjustments (RA) in respect of employees, service users, members applicants for pupillage and pupils under the Equality Act 2010.
2. There are also regulatory requirements outlined in the BSB Handbook [here](#).

CD8 You must not discriminate unlawfully against any person

rC12 You must not discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief, or pregnancy and maternity.

rC110 You must take reasonable steps to ensure that in relation to your chambers or BSB entity:

.3 the following requirements are complied with

Reasonable adjustments policy

.m chambers or BSB entity has a reasonable adjustments policy aimed at supporting disabled clients, its workforce and others including temporary visitors;

3. The BSB sets out guidance on complying with the above [here](#).

TYPES OF REASONABLE ADJUSTMENTS

4. There are two types of reasonable adjustments.
 - i. There is an anticipatory duty (with respect to service users), whereby a chambers/barrister must anticipate the types of adjustments that might be necessary for disabled people generally; and
 - ii. There is also a requirement to make individual adjustments¹ where to do so is reasonable in the circumstances.

¹ For service users, employees, pupils and members of chambers

TIP: The willingness of a set of chambers to make adjustments in recruitment, for service users, employees and others is often seen as an indicator of the diversity of that chambers/chambers' attitude to Equality & Diversity.

KEY ELEMENTS FOR CONSIDERATION IN MAKING A REASONABLE ADJUSTMENT:

Essentially the key elements are:

- (a) Effectiveness;
- (b) Practicability;
- (c) Resources including cost.

These are aspects of reasonableness.

5. **REASONABLENESS:** Chambers are only required to make adjustments which are reasonable. Working out what is reasonable does require some thought and is generally not settled by looking at whether the adjustment is 'too expensive'. In making a determination of reasonableness, it is sensible for chambers to ask the following questions:

- i. How effective the change will be in assisting disabled people in general or a particular customer, client, service user, member, pupil, employee or member of chambers (by removing any disadvantage)?
- ii. Whether it can actually be done. (Is it practicable? The easier an adjustment is, the more likely it is to be reasonable. Difficulty has to be balanced against other factors.)
- iii. What is the cost (if an adjustment costs little or nothing and is not disruptive, it would be reasonable unless some other factor (such as impracticality or lack of effectiveness) made it 'unreasonable'); and...
- iv. Chambers' resources and size. If an adjustment costs a significant amount, it is more likely to be reasonable for a Chambers to make it if it has substantial financial resources. Its resources must be looked at across the whole chambers, not just the grouping within chambers that provides the particular service (for example family law services or criminal law services).

NOTE: A chambers/Barrister does not have to change the basic nature of the service it/they offer. For example, a direct access barrister who is not licenced to

conduct litigation for example could not be required to do so as a reasonable adjustment.

6. **THE AIM:** Chambers should set out what it wishes to achieve through the development of the reasonable adjustments policy.

6.1 It is advisable to have a genuine debate about what chambers wants to achieve and to keep a detailed record of the points that were raised. This will not only assist chambers when it is challenged but will help chambers to focus on (i) the reasonable adjustments it needs in its particular circumstances; and (ii) determining its response to particular requests for adjustments.

6.2 As well as compliance with BSB standards, chambers could consider also how having a method of determining reasonable adjustments in particular cases and having considered how the anticipatory duty could benefit chambers.

Example questions to think about:

- Would it increase diversity within chambers?
- Would it make chambers more representative of society?
- Would it lead to adaptive ways of thinking which could be applied to other issues that arise?
- Would it result in chambers being able to cater for a wider client base?
- Would it ensure that chambers is maximising its prospects of compliance with the Equality Act 2010?

TIP: Set out what chambers wants to achieve in making a reasonable adjustment.

7. **THE ANTICIPATORY DUTY.**

7.1 It is suggested that there should be a declaration in chambers' Equality Policy:

e.g. "Chambers is committed to making reasonable adjustments in order to remove or reduce substantial disadvantage for disabled people working with chambers or receiving legal services".

- 7.2 A chambers that wants to show that it is committed to making adjustments in this way will have to think about what it can do to meet the anticipatory duty in respect of service users in particular.
- 7.3 The starting point for any consideration of making reasonable adjustments for service users is their aim. Reasonable adjustments aim to make sure that a disabled person can use a chambers' services in practice. This means they must be able to use those services (including access) to get the standard usually offered to non-disabled people or to achieve a standard which is as close as possible to that usual standard.
- 7.4 The duty's anticipatory nature means you cannot wait to react to a request from a person with a disability but should think in advance (and on an ongoing basis) about what both visibly and non-visibly disabled people might reasonably need, such as blind or partially sighted people, d/Deaf people, people who are mobility disabled or learning disabled people.
- 7.5 Although there is no legal obligation to comply with an anticipatory duty in relation to chambers membership, it is good practice to consider adjustments in advanced. This is important in relation to pupillage in particular. It is unlawful to discriminate against disabled pupils in their selection and pupillage. Adjustments that ensure access to premises are likely to benefit service users and therefore are subject to the anticipatory duty. However, some adjustments that might benefit a pupil e.g. sufficient access between non-public parts of chambers may require more time than is available between recruitment and the start of pupillage. It is good practice for chambers to anticipate that they will have pupils with mobility disabilities at some point and to have adjustments made. In any event temporary adjustments will have to be made where reasonable once it is known that a person with a disability is to become a pupil. It is advisable therefore for chambers to assess what would make its services and environment (actual or virtual) accessible to disabled persons including pupils.

Chambers should therefore consider its (a) physical circumstances, (b) online presence, and (c) its policies in relation to service users.

Example Questions:

- Are there accessible toilet facilities throughout chambers?
- Can chambers' website be accessed by somebody using a screen reader, or other assistive technology, or does its design prevent this?
- Could a wheelchair user access chambers?

- 7.6 It is important to remember that even when considering anticipatory duties, staff/members may not be the best person to assess the situation. Consider whether chambers' means allow the obtaining of an access report. These can be obtained commercially. The Bar Council has an [Accessibility Self-Audit Tool](#) that can assist chambers in identifying steps it should take to improve accessibility².
- 7.7 If an access report cannot be obtained, consider the list of examples of **Types of reasonable adjustment** in the model policy. Many of these can be achieved at minimum or no cost and so should be achievable by any set of chambers.
- 7.8 You can meet the anticipatory element of the duty by thinking in advance about how to provide facilities to make access easier for disabled people e.g. induction loops (portable ones are available) can be made available by chambers, or large print can be done at effectively nil cost on most printers.
- 7.9 Other adjustments may require a conversation with your landlord if you have one, such as necessary alterations to the physical structure of chambers to render it accessible.
- 7.10 For sign language interpreters, organisations such as the [Association of Sign Language Interpreters \(ASLI\)](#)³ can assist in finding a qualified BSL interpreter. Resources will include funding which may be available, so for example a Legal Aid funding certificate may pay for the costs of a BSL/English interpreter (or other disability specific communication support).
- 7.11 If one way of providing an adjustment appears unreasonable it is worth thinking about whether the barrier created by your chambers' policies or set up could be overcome by using **a series of adjustments**. For example, if you cannot adjust your premises you can consider offering alternative means for a person with a relevant disability to attend or participate in a conference. Some Inns have rooms that are accessible for wheelchair users, which and can be rented for conferences. Alternatively consider having a conference at an accessible office (for example the solicitors'), or if appropriate, the law client's home.
- 7.12 Here are some examples of the types of question to ask:
- i. What is chambers' analysis of how it provides its services? For each service or facility, break it into its component parts and ask (a) is this accessible; or (b) do we need to make reasonable adjustments to make it accessible?

² <https://www.barcouncilethics.co.uk/documents/bar-council-accessibility-self-audit-tool-for-chambers/>

³ <https://asli.org.uk/>

- ii. What are the means employed by chambers to provide information to services users?
- iii. How does chambers elicit information from services users?
- iv. Is there any physical feature of chambers' premises (toilets, entrances, lighting, telephony) that puts a disabled person at a disadvantage which is more than minor or trivial?
- v. Could chambers provide any kind of 'auxiliary aid' to make it possible for disabled people to use the service in the same way that non-disabled people without that disability can e.g. an induction loop.

7.13 **Conclusion:** You should have a policy that requires chambers to consider:

- i. altering your building's physical layout;
- ii. altering the way in which you provide your services; and
- iii. making other changes that would enable a disabled service user to use the service in a way that approximates as closely as possible to how a non-disabled person would be able to use that service.

8. MAKING INDIVIDUAL ADJUSTMENTS.

8.1 The duty to make adjustments is a continuing one in the sense that it is not something that can be thought about once and then forgotten. When planning reasonable adjustments, consideration of anticipatory duty changes is not enough. There is also a **legal duty owed** to individual disabled person.

8.2 In order to determine what adjustments might be reasonable in the case of a particular disabled person, you will need:

- clear and easy to use means of communication with the person;
- chambers should actively ask all clients (via solicitors or directly) whether any adjustments might be needed;
- an agreed process for sharing the data received (compliant with GDPR requirements);
- a means of ensuring that the more than minor or trivial ("substantial") disadvantage, which the person might otherwise experience, is understood by you so as to give you adequate information on the basis of which you can decide whether a particular adjustment or series of adjustments is/are reasonable;
- a means of consulting with the person concerning any proposed adjustment; and
- a complaints system to enable problems or matters arising to be addressed at an early stage.

8.3 Remember that the types of adjustments that it might be reasonable to make may alter as technology becomes available or chambers' circumstances change. Thus,

the increase in the use of remote technology for conducting conferences might make a difference to whether other adjustments are reasonable to make.

The question which should be considered in each case is **whether the adjustment sought or proposed gives the service user the closest approximation to the use of the service that a non-disabled person would have.**

9. PHYSICAL FEATURES.

9.1 Where a physical feature puts disabled people using a service at a more than minor or trivial disadvantage, you are obliged to take reasonable steps to:

- remove the feature;
- alter it so that it no longer has that effect;
- provide a reasonable means of avoiding the feature; or
- provide a reasonable alternative method of making the service available to disabled people.

9.2 In relation to any of the above, you may benefit from taking expert advice from an organisation that performs disability audits. However, in most individual cases you can probably consider providing a reasonable alternative method of service provision *if that results in the experience of the service being as close as possible* to the experience a non-disabled person would have of it.

9.3 Physical features will include the following when under chambers' control (i.e. owned or demised in the lease): 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). Determining what is possible may involve making applications for planning permission and/or listed building consent to change physical features that are barriers to the mobility impaired or to install wheelchair lifts to reach the front door and/or doorbells accessible from the street for wheelchair users. This highlights the importance of the anticipatory duty in ensuring that Chambers acts at the earliest opportunity to determine what measures are possible.

10. AUXILIARY AIDS.

10.1 Apart from those which may affect a large number of disabled people (such as an induction loop for the d/Deaf and hard of hearing), it will be important to **consult with the individual disabled person** as to what might assist them to

use your services. For example, a barrister might agree to record what would otherwise be a written advice and provide it by way of an electronic file format which could be read by the disabled person's technology.

10.2 The duty can include a duty to provide an auxiliary service, such as agreeing to provide advice in conference at the solicitors' office or client's home, if appropriate.

SOURCES OF INFORMATION

The following are a list of sources of advice and assistance which chambers can access on certain reasonable adjustments:

- [Access to Work](#)⁴
- Chambers should consider joining the [Business Disability Forum](#)⁵ which has resources for members including reasonable adjustments. As of July 2020, they have provided members with resources on a comprehensive Mental Health Toolkit, a Neurodiversity Diversity Toolkit and an Inclusive Communications Toolkit.
- [The Disability Unit](#)⁶

⁴ <https://www.gov.uk/access-to-work>

⁵ <https://businessdisabilityforum.org.uk/>

⁶ <https://www.gov.uk/government/organisations/disability-unit>

COMMON Q&As

- 1. Do chambers, or the other members of chambers, have an obligation to make reasonable adjustments in favour of a disabled member of chambers? So, to take an example, if a member of chambers was visually impaired, would the rest of chambers be under an obligation to pay for provision of materials in Braille, or a reader?**

Yes, chambers/other members have a duty to make reasonable adjustments (section 47 EA 2010 deals with this expressly, as do the BSB requirements).

- 2. What provision should chambers make for a pupil that discloses a disability after pupillage contracts have been signed? Also, what provision should chambers make for a pupil that becomes disabled during their pupillage?**

Chambers may need to recognise a need to spend more money on a disabled member or pupil than others. Other sources of funding, e.g. Access to Work from the Department of Work and Pensions, can also potentially be available, although only if the disabled member or pupil does not require other forms of support that takes their funding above the statutory cap.

- 3. Is it right that we should not be discriminating, in our selection of pupils, against those who may require reasonable adjustments, and that once we accept someone as a pupil we are under an obligation to make reasonable adjustments, whether in respect of disabilities that were disclosed or undisclosed, and whether they were present at the time of the offer or only occurred afterwards?**

It is unlawful to discriminate against disabled applicants, including on the ground that they may need adjustments that are difficult or costly. You are also obliged to supply honest and realistic information to applicants about what reasonable adjustments you will make available. Reasonable adjustments can require more favourable treatment of the disabled member so as to mitigate or remove any more than minor or trivial disadvantage caused to them by a chambers' arrangement ('provision, criterion or practice' (PCP)). The duty arises from the arrangement and the substantial disadvantage the arrangement causes. It does not derive from a procedural request by the person.

4. What is the right approach, and guidance as to how to assess reasonableness?

There is Equality case law on requests for reasonable adjustments and assessments by others. The reasonableness doesn't turn only on whether the adjustment is requested or whether the chambers entity goes through a process. This is why it is not lawful to refuse to provide any reasonable adjustment until an internal process is completed. The reasonableness of adjustments depends on all the circumstances (including cost). It is not generally lawful to pass on the cost of a reasonable adjustment to the disabled person.

When deciding if an adjustment is reasonable, the current guidance to chambers is to consider:

- Chambers' resources and size;
- how effective the change will be in avoiding the disadvantage the disabled person would otherwise experience;
- its practicality;
- the cost;
- the availability of financial support;
- any suggestion by the disabled person as to what adjustment(s) ought to be made;
- any medical information supplied by the disabled person as to his or her disability and its effects.

5. These generally appear to be the kind of factors which should be taken into account, but there seems to be no ultimate guidance as to how to decide whether an adjustment passes the reasonableness test. In particular, how is one supposed to balance the benefit to the disabled person against the cost of its provision?

The "reasonableness" of the adjustment will always be individuated and context specific (hence it is difficult to provide much more than the pointers in the guidance – plus a few more from the statutory scheme and case law).

The Disability Panel can also consider individuated questions and help check judgment calls and offer practical advice, either for the disabled person or chambers specific queries. (*The final judgment in any given case remains for chambers.)*

6. Is it sensible to wait for a pupil with a disability to raise the question of what adjustments are necessary for him or her or should we ask what adjustments are necessary in their opinion and if so when?

Disabled persons are likely to know what types of adjustments work for them and what their needs are in particular circumstances. It makes sense therefore to have a very clear policy which gives a point of contact for the disabled pupil and encourages a disabled pupil to raise any adjustments that they believe are needed. There is no particular point at which chambers can say that consultation with a disabled pupil is finished. However, if there are obvious areas in which an adjustment might be needed, it is sensible to draw the situations to the pupil's attention and to see whether the pupil has any suggestions on adjustments that can be made. When a pupil makes a suggestion, it should be genuinely considered



MODEL REASONABLE ADJUSTMENTS POLICY

1. Statement of Policy

Chambers is committed to making reasonable adjustments in order to remove or reduce substantial disadvantage for disabled people working in *Chambers*. This policy covers all employees of *Chambers* and all members, associates, academics, and trainees. There are separate policies for applicants and visitors.

This policy is circulated to all members, associates, academics, employees, trainees, and those who are required to read and understand it. They should also read and understand the policies applicable to applicants and visitors.

For the avoidance of doubt, this policy applies to disabled persons only. There may be circumstances in which adjustments to normal practices may be appropriate to assist persons who are not disabled but otherwise have particular difficulties or needs. If so, those matters should be raised with the person's line manager, trainee supervisor or practice team, or the Chief Executive/Head of Chambers.

2. Definitions

For the purposes of this policy, the definition of disability follows that set out in section 6 of the Equality Act 2010. A person is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. "Substantial" means more than minor or trivial and "long term" means 12 months or more.

The duty to make reasonable adjustments arises where a provision, criterion or practice, or a physical feature, or the lack of an auxiliary aid, places disabled people at a substantial disadvantage compared with persons who are not disabled. The duty is to take such steps as it is reasonable to have to take to avoid the disadvantage.

The duty to make reasonable adjustments in respect of employees applies to the employer, i.e. Chambers. The duty to make reasonable adjustments in respect of members, trainees, associates or academics applies to each individual member or employee who has responsibility for any disadvantage to the disabled person if the adjustment is not made.

3. Considering and requesting reasonable adjustments

The extent to which *Chambers* can consider or make reasonable adjustments will depend upon the extent to which the individual in question consents to the disclosure of their disability and its effects and of information about the particular disadvantage and how it might be alleviated. Normally, it will only be possible to make reasonable adjustments if the person or persons with responsibility for the function in question have sufficient information to enable them to make an informed decision. However, *Chambers* will be sensitive to issues of confidentiality and, in cases in which individuals do not wish details of their disability to be disclosed, will seek to identify alternative ways in which decisions might be made.

Within a reasonable time after a person known to be disabled accepts an offer to join *Chambers* as a pupil, member or employee, an appropriate person at *Chambers* should normally consider what, if any, reasonable adjustments they require and what, if any, steps might be required to identify such adjustments. The appropriate person will normally be in the case of an employee, their line manager or the Chief Executive; in the case of a pupil the Chief Executive or their first pupil supervisor, if known; in the case of a member, the Chief Executive. The appropriate person should consult with the disabled person and the Equality and Diversity Officer(s). Consideration should normally be given to whether an occupational health assessment should be carried out.

However, a disabled person working for *Chambers* or at *Chambers* may make, and should feel free to make, a request for a reasonable adjustment at any time. Such requests should be made to their line manager, their pupil supervisor, the Chief Executive or the Equality and Diversity Officers. A disabled person may also request an occupational health assessment at any time.

All requests for reasonable adjustments or occupational health assessments will be considered on a case by case basis with the advice and assistance of *Chambers'* Equality and Diversity Officers. The person(s) responsible for the decision will depend on the nature of the step requested and the extent to which the disabled person has consented to disclosure (as to which, see what is said above). In some cases, it may be necessary to request additional evidence – whether medical or otherwise – from the disabled person.

The person responsible for the decision will decide whether or not it is reasonable to take the step requested, taking into account all the circumstances including the extent to which the step would be likely to address any disadvantage, the cost of taking the step, and the impact of taking the step on the efficient and effective operation of *Chambers* and on other persons. If not, alternatives will be discussed with the disabled person where this is viable.

The Equality and Diversity Officers are responsible for considering whether or not disabled employees, members, associates, academics or pupils require assistance during an emergency evacuation and if so whether or not a personal emergency evacuation plan is required for the individual/s concerned. If so, the plan will be developed in partnership with the individual concerned in order to ensure that adjustments to the emergency evacuation procedure may be made.

4. Types of Reasonable Adjustment

It is not possible to provide an exhaustive list of the reasonable adjustments that *Chambers* may make. However, some of the types of adjustment that may be made, if considered reasonable, are listed below.

In relation to employees:

- Adjusting working hours, or reallocating certain duties;
- Providing the employee with a mentor or some other form of additional support;
- Acquiring or modifying equipment; and
- Providing training for the disabled person or any other person.

In relation to members/associates/academics/pupils:

- Adjusting briefing practices, for example to ensure the member/associate/academic/pupil is briefed with sufficient time to make arrangements at the Court for any necessary adjustments;
- Adjusting work allocation and practice management systems to reflect shorter working hours or other modes of practice;
- Providing support mechanisms such as mentoring or practice supervision; and
- Providing training for the disabled person or any other person.

Generally:

- Provision of information in alternative formats (e.g. large print, Braille etc);
- Provision of accessible conference room facilities, and
- Provision of a reader or interpreter when needed.