THE DISABILITY DISCRIMINATION ACT OBLIGATIONS OF GPs TO MAKE PHYSICAL ADJUSTMENTS TO PREMISES

1. INTRODUCTION

On 1 October 2004, Part III of the Disability Discrimination Act will come fully into force. This section of the Act requires providers of goods, facilities and services, which includes GP practices, to make physical adjustments to their premises to enable disabled people to use their services. This applies not only to patients using the premises, but also to staff employed by practices which employ 15 staff or more, whether full or part time. The exemption of employers with under 15 staff will be removed in October 2004. Employment issues are handled briefly in this guidance, but will be addressed in more detail in separate future guidance. This main purpose of this note is to give a general introduction to what the physical adjustments to surgery premises might be and how to approach the problem.

Unfortunately, neither the GPC nor other organisations can give GPs definitive guidance on what adjustments will protect them against any discrimination claims under the act. The general principle is that a service provider has a duty to take reasonable steps to change either the practice or procedure or physical characteristic of a building that makes it difficult for a disabled person to use the service. However, it will be for the courts to decide whether or not a service provider has taken reasonable steps to remove or adjust the feature that has given rise to a claim. The concept of reasonableness will therefore be open to interpretation on the basis of the circumstances of the case. The authoritative document to guide the courts Nvill be the Disability Discrimination Act - New Code of Practice (see appendix 2 - further reading).

Practices are strongly advised to start planning and making their adjustments ahead of the 1 October 2004 deadline. The adjustments that need to be made will often be simple ones, such as the installation of a handrail or the removal of an obstruction. Often it will be possible to avoid making an adjustment by finding an alternative way of providing the service or re-locating the point of service.

Other possible adjustments will be more expensive and complex, such as the installation of an induction loop at the reception desk or a stair lift. However, you are encouraged to think creatively about how to avoid the need for expensive changes, particularly if there is at first sight no funding available from the PCO or HA. Relocating a service to an accessible ground floor level, for example, would obviate the need for a stair lift.

Ensuring a reception area is quiet and well lit enough to allow lip reading may be an acceptable substitute for an induction loop. It all comes down to the concept of reasonableness, and it is likely that the courts would take prohibitive costs into account when deciding if the steps you have taken are reasonable.

Practices are also encouraged to involve PCOs at an early stage. There is more information about this in the following sections. It would be advisable to record any

discussions and decisions taken at practice meetings about complying with the DDA. This would provide evidence that the practice has taken its obligations under the Act seriously and considered how best to implement the necessary changes.

2. BACKGROUND - THE DISABILITY DISCRIMINATION ACT 1995

The Disability Discrimination Act 1995 aims to end the discrimination that many disabled people face and aims to give them equal rights in terms of employment, access to goods facilities and services, and buying or renting property or land.
Part I of the Act deals mainly with the definition of disability. It defines a disabled person as someone with "a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities". It is worth noting the following exclusions from the definition:

- addiction to or dependency on alcohol, nicotine, or any other substance (other than in consequence of the substance being medically prescribed),
- the condition known as seasonal allergic rhinitis (e.g. hayfever), except where it aggravates the effect of another condition;
- tendency to physical or sexual abuse of other persons.

Part II of the Act deals with the duties of employers and trade organisations towards their disabled employees and members.

The relevant section of the Act for the purpose of this guidance is Part III - Access to Goods and Services. Its provisions are being introduced in three stages.

- since 2 December 1996 it has been unlawful for service providers to treat disabled people less favourably for a reason related to their disability;

- since I October 1999 service providers have had to make `reasonable adjustments' for disabled people, such as providing extra help or making changes to the way they provide their services; and

- from 1 October 2004 service providers may have to make other `reasonable adjustments' in relation to the physical features of their premises to overcome physical barriers to access.

The requirement to make physical adjustments to premises is contained in paragraph 21 (2).

'Where a physical feature (for example. one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to

(a) remove the feature:
(b) alter it so that it no longer has that effect;
(c) provide a reasonable means of avoiding the feature; or
(d) provide a reasonable alternative method ofmaking the service in question available to disabled persons. "

3. WHAT COUNTS AS A PHYSICAL FEATURE?

The DDA defines a physical feature as

"anything on the premises arising from a building's design or construction or the approach to, exit from or access to such a building: fixtures, fittings, furnishings, equipment or materials and any other physical element or quality of land in the premises.... whether temporary or permanent".

Physical features will therefore include

- steps and 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
- lighting and ventilation
- lifts and escalators
- floor coverings
- signs
- furniture
- temporary or movable items (such as equipment and display racks).
- public facilities (such as telephones, counters or service desks)

4. WHAT CONSTITUTES "REASONABLE STEPS"?

The Disability Rights Commission suggests that the following factors will have a bearing on whether a change is a reasonable one for service providers to have to make:

- whether taking any particular measures would be effective in overcoming the difficulty that disabled people face in accessing the services in question
- the extent to which it is practicable for the service provider to take the measures
- the financial and other costs of making the adjustment
- the extent of any disruption which taking the measures would cause
- the extent of the service provider's financial and other resources
- the amount of any resources already spent on making adjustments
- the availability of financial or other assistance.

Affordability and feasibility are therefore key factors in deciding what is reasonable. The level of resources available to make the changes is likely to be taken into account, as are other calls on resources. If it can be shown that a major adjustment could divert resources from patient care, this would be a good argument in favour of the practice. However, it would not relieve the practice of the duty to consider the problem altogether. You may well need to show that you have considered and made reasonable alternative adjustments or alternative ways of providing the service to disabled people.

5. WHAT HAPPENS IF PRACTICES PREMISES DO NOT COMPLY WITH THE NEED TO MAKE REASONABLE ADJUSTMENTS BY I OCTOBER 2004?

If a practice does not comply with the need to make reasonable adjustments by 1 October 2004 and cannot justify its failure to do so, a disabled person will be able to bring civil proceedings against the practice in the County Court. If successful, the claimant would be awarded compensation (on which there is no upper limit) for any financial loss suffered, including injury to feelings. The disabled person may also seek an injunction to prevent the practice repeating any discriminatory act in the future. The court may make a declaration as to the rights and responsibilities of the parties involved but it cannot order the practice to make some physical changes to its premises.

The Disability Rights Commission has established an independent conciliation service for disputes arising under Part III of the Act, with a view to settling the same without resorting to court action. Court action must be brought within six months of the alleged discrimination but this time limit is extended by a further two months when a person is referred to the conciliation service by the Commission.

6. CHECKING COMPLIANCE WITH THE DDA

A short checklist is provided in appendix l. This is intended to help you start the process of making your premises compliant. It is not as comprehensive as a full access audit. An access audit assesses how easy your premises make it for disabled people to access and use your services. They are usually divided into two stages: gathering information and making recommendations. A practice might want to do the first of these itself, with the help of the Department of Health's audit checklist. However, the recommendations would need specialist technical advice.

Some PCTs are offering practices full audits. GPs should encourage this, as it is a good opportunity to have premises assessed at no cost and draws the funding problems to the attention of the PCT in a manner they cannot ignore. Employing an access consultant will be expensive and carrying out such a survey yourself will be time-consuming. That the audit may reveal the need for improvements should not be considered a threat. It is far more risky in the long term to avoid making these improvements, as this could result in a claim against the practice and possibly the award of damages to the complainant after 1 October 2004. These would fall to the practice, not the PCT.

1 Access to Health Service Premises: Audit Checklist (available at http://www.doh.gov.uktpubtdocs/doh/nhspremises.pdf)

Acceptance of a PCT audit cannot indemnify the practice against claims, but it could strengthen its case greatly in the event of any claim, as it demonstrates the practice's intent to comply with the Act. It would also be a good opportunity to make a case for PCT reimbursement for the necessary adjustments. Unfortunately, the Department of Health has so far refused to release funding for adjustments, and so PCT funding is entirely discretionary. That a practice has made an application for funding, even if this was refused, would help it to demonstrate that it has taken reasonable steps to comply with the Act.

7. DDA CHECKLIST

A suggested initial checklist for DDA adjustments is provided in appendix 1.
As the introduction states, this checklist is no substitute for a full access audit and is only intended to give you an initial idea of the scale of necessary physical adjustments.

9. LOCAL ISSUES

Funding for DDA adjustments is a problematic area. The Department of Health has offered no ringfenced, central funding for compliance with what is a legal, but not an NHS obligation.

For new-builds, DDA compliance should be built into the building costs and included in the planning of the premises, site and funding arrangements. This should not usually be an issue.

However for most of the NHS primary care estate, conversion of old premises is likely to be necessary, with attendant planning and funding problems. Under the Act, the provider of the premises is responsible for making the necessary changes. GPs and LMCs should strongly encourage PCOs to approve maximum levels of Improvement Grants to fund the necessary changes.

In the interests of providing a high quality service, PCTs will be unwilling to see non-compliant premises in their area. They will also be unwilling to see practices threatened with actions as a result of a complaint brought under the Act, as this would reflect badly on local healthcare provision.

It is therefore in practices' interests to encourage PCTs at an early stage to participate in joint solutions, by suggesting that they fund an access audit, for example. Access audits and the resulting cost estimates should form part of early planning for the PCT budget round with the assistance and involvement of the LMC.

In the event of discrimination claims, all this could lend weight to the practice's argument that it has taken all reasonable steps to raise premises to the level of compliance with the Act with the resources available.

10 STAFF ISSUES

10.1 Employers' obligations towards disabled staff

If you employ 15 people or more (full or part-time) you have obligations under the DDA towards those employees. This will be extended to all employers, regardless of the number of employees, on 1 October 2004. It is unlawful to treat any employees with disabilities, or applicants for jobs with disabilities, less favourably for a reason related to those disabilities. This applies to recruitment, doing the work (including career development and promotion) and redundancy and dismissal. An employee may make a complaint against you, which could be referred to an employment tribunal, which may award them compensation for financial loss or injury to feelings.

As employers, you need to consider whether any employment arrangements or physical features of the workplace are disadvantaging disabled employees in any way, and then make reasonable adjustments to remove these disadvantages.

The Disability Rights Commission suggests the following specific types of adjustments:

- Making adjustments to the premises. This is covered elsewhere in this guidance, but obviously need to be extended to staff areas.
- Reallocation of minor duties to another employee
- Offering flexible working hours, to avoid rush hours, for example.
- Allowing absences during working hours, for rehabilitation, assessment or treatment.
- Assigning or transferring a job or an employee to a place of work more suited to their needs. For example, moving a workstation to a more accessible location.
- Making instructions and manuals more accessible; for example, providing a Braille version for a blind person.
- Providing appropriate or additional training.

It is important to ensure that recruitment procedures do not discriminate against applicants with disabilities. The job specification, applications forms, selection process, assessment technique and terms of employment offered all need to be designed so as not to disadvantage disabled people.

10.2 Staff Training

In view of the role of staff in facilitating disabled patients' access to services, it would be advisable for practices to include in the staff training programme a basic grounding in the DDA, equal opportunities legislation and recruitment policies. Once again, the demonstration by the practice that it has taken this step could be very helpful in the event of discrimination claims.

Employers are held to be vicariously liable for their employees' actions under the DDA 1995 (and under the Sex Discrimination and Race Discrimination Acts). The argument that the employer had no knowledge of their employer's actions is therefore not an adequate defence under the Act.

11. LEASED PREMISES

Under the DDA, it is the service provider, not the owner of the premises, who has to make physical adjustments to the premises if such adjustments are justified. However, where service providers rent premises they will be obliged under their leases to ask the landlord's permission before making any changes to the premises. The DDA allows for this and states that where an adjustment is reasonable, the service provider must merely write to their landlord informing them that they wish to make changes to the premises under the DDA. It is then up to the landlord to agree or disagree to these changes. If the landlord withholds their consent then the service provider's obligations under the DDA have ended. They should for their own protection obtain the landlord's response in writing and keep it on file.

As it is up to the service provider to make the relevant changes to premises under the DDA, they must bear the cost. Where a number of practices share leased premises, they should share the costs of any work required.

APPENDIX 1 - BASIC DDA CHECKLIST

As the introduction states, this checklist is no substitute for a full access audit and is only intended to give you an initial idea of the scale of necessary physical adjustments.

- **GROUNDS, PUBLIC OR COMMON AREAS**

  Even if the grounds around your premises are not practice-owned, you will need to ensure that there are no obstacles or impairments to people using sticks, crutches and wheelchairs and people with visual impairments.

- Is the pavement outside the premises free of potholes, uneven paving surfaces, etc?

If not, you may need to get in touch with the local authority roads department to request repairs.

- Is all vegetation cut back from paths leading up to the entrance?
- Is the route to the building kept free of leaves, snow and ice?
- If the route is not level, is there a slip-resistant ramp with handrails available?
- Are all paths free of obstacles, such as litter bins?
- Are all surgery signs clearly visible?

Signs should be as visible and possible. Lettering needs to be large to help people with visual impairments.

- Is external lighting good enough to help people find their way to the premises?
- If you have a parking area, is there a reserved, wider bay for disabled people?

- **ACCESS TO MAIN ENTRANCE**

- Do you have alternative access, or a ramp, for people in wheelchairs.?

If the main entrance is not level, or is inaccessible and hard to change in some other way, is there a rear or side entrance where level access is possible?

- Do the steps have a clearly visible handrail?
- Are the steps the mselves clearly visible?

Painting steps a different colour to the surrounding surfaces can make them easier for visually impaired people to see.

- Is the entrance well lit?
- Is there an accessible bell, or entryphone system, for people to use if they are having difficulties getting in?

This would be particularly desirable if access is not ideal.

- **DOORWAYS**
- Is the door opening wide enough for all users?

Wheelchair users generally need at least 750mm clear opening width (the space available between the door frame and the door in the open position).
If doorways do not meet this specification, you may need to have the doorway widened if there is no alternative way in.

- Is the door-handle low enough for a wheelchair user to reach easily? The recommended height is 1000 mm.
- Are entrance mats flush with the floor so that the surface is even?
- If a door closer is fitted, does it have a delayed, or slow-action closure mechanism.?

- **GETTING AROUND INSIDE THE PREMISES**
- Are there enough signs?
- Are signs simple, short and easy to read, and located at convenient levels for wheelchair users?
- Signs can be made clearer by using pictorial symbols and visual clues.
- Are aisles, corridors and areas near doors free of obstacles and wide enough for wheelchairs to manoeuvre?
- If there is a change of level, is there a platform lift available? If not, is there a permanent ramp that is wide enough for wheelchairs?
- Are internal steps, and other potential hazards, clearly marked and fitted with a handrail and ramp?

Are all floor surfaces as level as possible, without the need for major adjustments? For example, are mats and joins between different floors, etc flush with the floor and each other?

- **RECEPTION/WAITING AREAS**

- Does your reception desk have an induction loop?
- This is an expensive adjustment but may be necessary, particularly at a glass counter.
- Is the reception area reasonably quiet and located away from any noisy machinery?
- Is seating suitable for people with mobility impairments?
- Is there waiting space for wheelchair user?
- Might it be possible to create a lowered section of the reception desk?

If not, it would be advisable to provide some means of allowing wheelchairs users to sign forms, etc, such as a lower writing shelf, or simply a clipboard. Staff could be encouraged to come out from behind high reception counters, when a wheelchair user approaches.

- Are people standing behind reception well lit from the front, to make lip-reading easier?

- **TOILETS**

Are the toilets accessible, both in terms of getting to and using them?
If there is sufficient space available, the toilet may need to be modified to full wheelchair accessible standards. You will need technical advice on this.

The following practical suggestions should also be helpful

- fit grabrails to help people with limited movement, balance or grip
- ensure floor surfaces are non-slip
- install outward opening doors
- avoid shiny ceramic tiles and floors, which may cause reflection and glare

EASE OF COMMUNICATION WITH STAFF

Your premises should make it as easy as possible for disabled people to communicate with your staff.

Practice staff should show awareness of the needs and sensitivities of people with hearing impairments. For example in situations where it is not reasonable to install an induction loop, staff should make the effort to communicate in other ways, such as exchanging written notes. Staff could be encouraged not to cover their mouths when speaking to patients in order to help people who lip-read. Allow extra
time, and repeating back to the customer to check accuracy can also help, as even partially deaf people may lip-read.

Even if few physical adjustments can be made, the attitude and awareness of everyone who deals with patients is key. A clear willingness to anticipate needs and look for alternative solutions could go a long way to avoid any complaints or legal action against the practice. A disabled patient minded to make a complaint will only be encouraged to do so if they encounter unreasonable, indifferent or insensitive attitudes Clearly, these problems can be ameliorated if your staff are aware of the Act and trained appropriately. Staff training in disability awareness is therefore advisable and demonstrates the practice's clear commitment to take reasonable steps to comply with the Act

APPENDIX 2 - FURTHER READING

The Disability Discrimination Act 1995: new requirements to make goods, facilities, services and premises more accessible to disabled people from 2004. New Code of Practice.

Available at http://www.drc-gb.or_g/drc/InformationAndLegislation/Page331a.asn
or from The Stationery Office (£13.95).

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Disability Discrimination Act: Access to Goods, Services and Facilities.

Regulatory Impact Assessment - The Government's assessment of the costs and benefits of introducing the later rights in Part III of the Disability Discrimination Act 1995 (DDA) Available on the internet at www.disability.gov.uk/dda/ria part3.html The Disability Discrimination Act 1995

Available on the internet at www.legislation.htnso.gov.uk/acts/actsl995/1995050.htm Or from The Stationery Office
Employing disabled people: a good practice guide for employers and managers Available on the internet at http://mvw.drc.Rov.uk/drc/Documents/DLE7.doc