

ADVICE & GUIDELINES ON PROFESSIONAL CONDUCT

FOR DISPENSING OPTICIANS

APPENDIX E - GUIDANCE OF LEGISLATIVE ISSUES

[1] DISABILITY DISCRIMINATION ACT 1995

AE1.1 'An act to make it unlawful to discriminate against disabled persons in connection with employment, the provision of goods, facilities and services or the disposal or management of premises; to make provision about the employment of disabled persons; and to establish a National Disability Council.' [8th Nov 1995] This advice is a reminder and update of advice produced in consultation with the AOP, the ABDO, the College, FODO and the Disability Rights Commission.

Who Has Rights Under The Act?

AE1.2 Disabled People - A person is disabled if he/she has a physical or mental impairment, which has a substantial and long-term adverse effect on his/her ability to carry out normal day-to-day activities. The effect must be substantial (that is, more than minor or trivial), and adverse, and long term (that is, likely or is likely to last for at least a year or for the rest of the life of the person affected):

- People who have had a disability within the definition are protected from discrimination even if they have since recovered
- Physical or mental impairment includes sensory impairment. Hidden impairments are also covered (for example, mental illness or mental health problems, learning disabilities, dyslexia, diabetes and epilepsy)

Duty as an Employer

AE1.3.1 This duty applies to all employers regardless of how many staff you have.

You must not discriminate against a disabled person in relation to the recruitment or retention of staff. There are four forms of discrimination which are unlawful:

- Direct discrimination
- Failure to comply with a duty to make reasonable adjustments
- Disability-related discrimination
- Victimisation of a person (whether or not he is disabled)

AE1.3.2 The duty to make reasonable adjustments applies for example, to selection and interview procedures and the premises used for such procedures, as well as to job offers, contractual arrangements and working conditions. Reasonable adjustments may include:

- 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 hours of working or training
- Assigning the person to a different place of work or training
- Allowing the person to be absent during working hours for rehabilitation, assessment or treatment
- Giving, or arranging for, training or mentoring (whether for the disabled person or any other person)
- Acquiring or modifying equipment
- Modifying instructions or reference manuals
- Modifying procedures for testing or assessment
- Providing a reader or interpreter
- Providing supervision or other support

This is not an exhaustive list and it might be reasonable for you to take other steps. The employer owes the duty to the individual employee and does not have to anticipate the disabled person's requirements. However, although there is no duty under Part 2 of the Act to anticipate the needs of disabled people in general, you should keep all your policies under review and consider the needs of disabled people in the process. It would also be sensible and cost-effective to consider access issues during any major alterations to the work place environment.

AE1.3.3 Access to Work_- In the event that your employment duties are triggered when an employee becomes disabled, you employ a disabled person or when a disabled person applies for a job you may get help from 'Access to Work' (AtW). AtW provides advice and practical support to disabled people and their employers to help overcome work related obstacles resulting from disability. In addition AtW pays a grant, through Jobcentre Plus, towards any extra employment costs that result from disability.

AE1.3.4 The Disability Symbol - The Disability Symbol is a recognition given by Jobcentre Plus to employers who have agreed to meet five commitments regarding employment, retention, training and career development of disabled employees:

- To interview all disabled applicants who meet the minimum criteria for a job vacancy and consider them on their abilities
- To ensure there is a mechanism in place to discuss, at any time, but at least once a year, with disabled employees what can be done to make sure they can develop and use their abilities
- To make every effort when employees become disabled to make sure that they stay in employment
- To take action to ensure that all employees develop the appropriate level of disability awareness needed to make these commitments work
- Each year, to review these commitments and what had been achieved, plan way to improve on them and let employees and Jobcentre Plus know about progress and future plans

AE1.3.5 Policies, Procedures and Practices - As an employer you may be liable for any discrimination which happens in the work place whether or not you are aware of it! You should therefore have anti-discriminatory policies and practices and make all staff aware of them. If such policies and training can be demonstrated an employer may be able to defend themselves in a legal action.

A primary area of attention is training for all staff on your policy towards disabled people and their legal rights, disability awareness and disability etiquette.

Your responsibilities as an employer under the DDA

Scope	<ul style="list-style-type: none"> • All employers covered by DDA except Armed Forces • Practical work experience, whether paid or unpaid, is covered • Provisions on discriminatory advertisements • Employment services are covered
Types Of Discrimination	Four kinds of discrimination <ul style="list-style-type: none"> • Direct discrimination • Failure to make reasonable adjustments • 'Disability-related discrimination' • Victimisation
When Is Justification Relevant?	Justification is NOT relevant in cases about: <ul style="list-style-type: none"> • Direct discrimination • Failure to make reasonable adjustments Justification is relevant in cases about <ul style="list-style-type: none"> • Disability-related discrimination
Harassment	Provisions on harassment

The Legal Requirements as a Service Provider

AE14.1 Unlike the duties as an employer the duties as a service provider are anticipatory and the duty is owed to all disabled people. It requires the service provider to plan ahead.

You must not discriminate against a disabled person because of their disability. This could include:

- Refusing to serve a disabled patient
- Offering a disabled patient a lower standard of service
- Offering a disabled patient a service on worse terms
- Failing to make reasonable adjustments to the way services are provided to disabled patients
- Failing to make reasonable adjustments to the physical features of service premises, to overcome physical barriers to access.

A service provider will have to take reasonable steps to

- Remove the feature; or
- Alter it so that it no longer has the effect; or
- Provide a reasonable alternative means of avoiding it; or
- Provide a reasonable alternative method of making the service available

The legislation does not deal with the above concepts hierarchically: the question is what is reasonable. In broad terms, reasonableness will depend on the type of service being provided; the nature of the service provider and its size and resources; and the effect of the disability on the individual disabled person. The Disability Rights Commission's statutory Code of Practice (Rights of Access: Goods, Facilities, Services and Premises) covers the legal position and may assist service providers' legal advisors to give best advice. However, the fact remains that the DDA is an evolving piece of legislation and the concept of what is reasonable will develop and change as legal precedents are set.

AE1.4.2 You must make reasonable adjustments for disabled people.

- Undertake a disability access audit in each of your practices covering not only physical access but other issues such as lighting, colour schemes, signage etc.
- Review all your policies, procedures and practices and make reasonable changes to anything which might make it more difficult for a disabled person to use your services
- Take reasonable steps to introduce equipment or other methods which make it easier for your disabled patients to access your services. Examples would be to provide a range of information in larger print for the visually impaired or the provision of a text telephone for deaf patients or an induction loop for patients who use a hearing aid
- Assess the physical features of your premises and make reasonable adjustments to overcome physical barriers to access
- Consider alternative methods of providing a service. For example home-visits for wheelchair -users

Good Practice - Training

AE1.5.1 All your staff must be aware of the law. They need to know that services for disabled patients are more than just a part of good customer care. All staff should have disability awareness training covering the etiquette of serving patients with the full range of disabilities.

AE1.5.2 Training should be carried out by suitably qualified trainers. The Disability Rights Commission website has a list of licensed trainers who have been licensed to use the DRC Best Practice Trainers Resource Pack to train others in DDA implementation. There are also numerous organisations and companies who can provide training for your staff either on-site or by distance learning. The DRC has a list of organisations and companies which provide training; however, it is not exhaustive and does not imply endorsement. When commissioning training identify what you need for your staff, and explore with potential trainers what they are willing and able, to undertake.

AE1.6 How Friendly, Or Otherwise, Is Your Practice to Disabled Patients?

- Do all your plans include disability issues?
- Do you know who your disabled patients are and their requirements?
- Are your premises user-friendly? Can your disabled patients get in and out easily?
- Are there any physical barriers to access on your premises?
- Is your complaints procedure accessible? For example, could a deaf person complain easily?
- Is your information clear and accessible? For example, could a visually impaired person access practice information in larger print or Braille?

Enforcement and Remedies

AE1.7 To minimise the possibility of a County Court action or employment tribunal emphasis should be put on internal grievance procedures to handle any claims of disability discrimination. If a claim is upheld the court can make a declaration, award compensation for financial loss, injury to feelings and

issue an injunction to prevent future discriminatory acts. In a case in 2003 *Purves v Joydisc* where an appeal against the level of damages was heard, the Court of Session found that £750 is the least that can be awarded 'for the very slightest injury to feelings'. If a claim is upheld at employment tribunal compensation can be claimed for loss of earnings, personal injuries, injury to feelings and aggravated damages.

AE1.8 Conclusions

- Good access, both physical and environmental, is good business!
- Complying with the law and striving for good practice in patient care
- can only reflect well on your practice and the profession generally
- Don't assume that the DDA doesn't or won't apply to you
- Be fair. You should treat disabled customers exactly like any other
- customers and be prepared to make reasonable adjustments
- Consider whether you need to change the way you treat your
- customers or employees in the light of the DDA and act on it.