

Addressing the Requirements of Part III of the Disability Discrimination Act (1995)



A Management Guide for Football Clubs
Richard Wood OBE
September 2003

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Richard has been actively involved in advising the football industry on its duties and obligations under the Disability Discrimination Act. His recent work includes stadium audits and training programmes for a number of clubs. In addition, Richard has produced major reports to assist clubs to implement action plans around the Disability Discrimination Act. These include:

"Meeting the Requirements of the Disability Discrimination Act (1995)" A guide for FA Premier League Clubs (Jan 2002).

"Ticketing and Match Day Issues" A guide for FA Premier League Clubs (Nov 2002).

Richard has also written the DDA module in the "Training Package for Stewarding at Football Grounds".

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David has been a practising solicitor for the last 14 years. He heads a specialist department in Education and Law, at Levenes Solicitors and is listed in the top rank of experts in Education Law and as an expert in Administrative and Public Law in Chambers and Partners Guide to the Legal Profession. He is a trustee of the Disability Discrimination Act Representation and Advice Project; Co-Chair of the Law Society's Mental Health and Disability Committee (from September 2003); a member of the editorial board of Disability and Society Journal; a member

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He is published widely and has taught nationally and internationally and undertakes consultation work with a wide variety of public, private and voluntary organisations. His publications include; Co-author of "Notes on the Disability Discrimination Act" (the tenth edition of which is soon to be published) and a contributor to "Disability Rights Law and Policy" edited by Mary Lou Breslin and Sylvia Yee.

David is the winner of Radar's "People of the Year" award for the achievement in the furtherance of Human Rights of Disabled People in the UK, 2002.

Whilst every care has been taken to ensure that the legal advice given in this report is comprehensive and accurate, no responsibility for loss occasioned to any person acting or refraining from action as a result of material in this publication can be accepted by the authors or publishers.

Introduction

The Disability Discrimination Act 1995 (DDA) brings in new measures aimed at eliminating discrimination against disabled people.

Service providers, including football clubs, have been subject to certain requirements since December 1996 and October 1999 and further obligations will arise from 1st October 2004.

The Football Association has produced this guide to help clubs understand and meet the requirements of Part III of the DDA (the provision of goods, services and facilities). The aim is not just to ensure that clubs lessen the risk of possible prosecution, but also to ensure that disabled customers have equal access to and enjoyment of club facilities.

The advice has been written by Richard Wood OBE, a disability consultant with over 20 years experience on disability issues and who has recently advised the FA Premier League on DDA compliance. Legal advice has been provided by David Ruebain, a disabled solicitor who specialises in disability law.

To assist in the preparation of his advice, Richard visited three clubs at different levels – one in the Football League, one in the Football Conference and one in a Contributory League – to evaluate how they operate and to review the range of services and facilities available at these clubs. The result is a detailed study of the issues arising out of the DDA, that will hopefully be of benefit to clubs at all levels of the game.

**The Football Association
September 2003**

Further information:

Football clubs requiring further information should contact Chris Whalley, Head of Stadia, Safety and Security at the FA on 020 7745 4624 or by email to Chris.Whalley@TheFA.com

Recommendations

The following summarises the key recommendations that clubs are advised to follow to ensure that they comply with the DDA. More detailed information is given in Chapter 5. In addition, Chapter 6 looks at how to create an action plan to implement the recommendations.

Policy and Management

Clubs should develop policies covering their duties under the Part III provisions of the DDA.

Clubs should identify a senior person responsible for those policies.

Clubs should develop an action plan to implement the policies.

Training on the Part III duties of the DDA should be made available to managers and customer contact staff.

Stewards, especially those allocated to disabled spectator areas, should be included in DDA training programmes.

Stadium Issues

Clubs should audit stadium and any "off site" facilities to identify those that are not accessible and should make reasonable adjustments in line with the DDA requirements to provide accessible facilities.

Clubs should establish the exact build or modification dates of all properties in order to evaluate their possible 2004 duties.

Clubs should implement an action plan to improve access taking into account modifications that might be necessary from 2004. The schedule should specify the dates on which the club will have new duties.

Ticketing Issues

Clubs should review ticketing policies to ensure that they do not discriminate against disabled people.

Clubs using third parties to decide concessionary ticket entitlement or distribute or sell tickets to disabled spectators should note that the club retains responsibility not to discriminate, and should take steps to minimise the risk of doing so, accordingly.

Clubs should ensure that ticket outlet points are accessible to disabled people.

Clubs should publish information (in appropriate formats) setting out their concessionary ticketing policies.

If clubs offer concessionary tickets or reduced match day admittance to disabled supporters then the policy should be based on a disabled person's need to be accommodated in a designated viewing area or the need for the provision of an auxiliary aid or service including that provided by the disabled person's own Personal Assistant (PA).

Personal Assistants, where admitted free of charge, should be regarded as an auxiliary service to provide appropriate support to the disabled person.

Admittance charges should be made on the disabled person, not their PA.

Health and Safety

Clubs should not deny access to facilities or services on Health and Safety grounds without first establishing whether reasonable adjustments would remove the health and safety concern.

Provision of Information

The duty to provide accessible information to enable disabled people to access services and facilities is a key requirement under the DDA.

An information audit should be carried out.

Clubs should ensure that disabled people can obtain accessible information on services and facilities available.

Commercial Issues

Clubs should be aware that commercial activities (where these involve offering goods, services or facilities to the public or a section of the public) such as merchandising, selling of match day packages, some arrangements with sponsors etc will come within the scope of the DDA.

An audit of all commercial activities should be carried out and reasonable adjustments made to ensure compliance with the DDA.

Football Related Issues

Clubs should be aware that the activities of Football Academies and Schools of Excellence are likely to come under the DDA.

Clubs should be aware that services offered through (say) Football in the Community schemes, such as free tickets, stadium visits, meet the players etc will also come within the DDA.

Consultation

Clubs should consult with disabled supporters on all plans that impact on them. Where a club has a Disabled Supporters Club or Association it should consult with that body. Clubs who do not have this facility should consult either with individual disabled supporters or with local associations of disabled people.

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Chapter 1

Introduction to the Report

Most football clubs are aware that they have a legal duty to provide spectator facilities for disabled supporters and many have taken steps to improve their facilities in recent years. A number of publications provide guidance on how stadium access issues can be addressed. These comprise both statutory guidance such as Part M Building Regulations, British Standard BS8300 and the Disability Discrimination Act and other guidance such as The Guide to Safety at Sports Grounds, the audit report compiled by the National Association of Disabled Supporters (NADS) and a new guide, "Accessible Stadia" published by the Football Stadium Improvement Fund (FSIF) and Football Licensing Authority (FLA).

Although earlier work, "Designing for Spectators with Disabilities" (1992) had identified that facilities for disabled spectators at many stadiums were lacking, the recognition that improvements were not just needed but were likely to be required came with the publication of the Football Task Force Report "Improving Facilities for Disabled Spectators" (1998). This report acknowledged that new legislation was set to have a profound impact on the manner in which clubs are required to provide and improve facilities for disabled people. This legislation, passed in 1995, was the Disability Discrimination Act.

The Football Task Force Report set an agenda for action and this agenda was further refined by the creation of an "audit check list" published by the National Association of Disabled Supporters (NADS). Both documents give a comprehensive account of the barriers that disabled supporters face in attempting to access facilities at football stadia. Many of the barriers relate to the "match day experience" covering issues such as car parking, ground access, toilets, catering etc. The FSIF/FLA "Accessible Stadia" report goes further by clarifying the relationship between the provisions of the Disability Discrimination Act and Building Regulations but still maintains a focus on stadium design and associated spectator facilities.

Creating accessible facilities is a legal requirement of the Part M Building Regulations and clubs that have built new stadiums or stands or have refurbished facilities within existing

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stands will be aware that they should have complied with their duties under those regulations. However, there appears to be a general belief that, in meeting the Part M requirement, clubs have no further obligations to disabled spectators. Such a view would be mistaken.

Many clubs are not aware of the full implications of the Disability Discrimination Act (known as the DDA), which extends far beyond basic access requirements and affords "rights" to disabled people not to be discriminated against in almost every area of activity that a football club is likely to be engaged in. Further, many clubs are also unaware that they have had legal requirements under the DDA since 1996. For example:

- 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 1 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.
- 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 Act and its associated Code of Practice clearly state that sports stadiums are covered. Further, it also states that all goods, services and facilities, "whether charged for or provided free of charge", come within the legislation. This means that all activities for the public undertaken by clubs are likely to come under the Act. A recent study completed for the FA Premier League found that the following are likely to be considered as club activities and operations that come under the DDA.

Club Policies: Includes both formal and informal policies and practices adopted by the club which determine how its services are operated.

Stadium Issues: Stadium accommodation, stadium access, stadium facilities (including off site

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facilities such as shops etc), health and safety.

Ticketing Issues: Ticket administration, concessionary ticket eligibility, pricing, season tickets and "All Ticket" Cup or League matches.

Match Day Issues: Seating and viewing, Personal Assistants (PAs), car parking, match day information, catering and refreshments, toilet facilities, stewarding, travel information.

Club Operations: Provision of information, commercial activities, merchandising, sponsorship, supporters clubs, football academies and centres of excellence, Football in the Community Scheme, community activities, consultation.

This report seeks to advise clubs on their duty not to discriminate against disabled people and to suggest policies and practices that will enable them to take the required actions to ensure that discrimination does not occur. The timing of the report is appropriate. First, at least four clubs have had claims of discrimination brought against them by disabled spectators. Clubs need to be aware that disabled spectators are increasingly likely to enforce their rights under the law. Second, new provisions come into force in October 2004 and clubs need to have action plans in place to ensure that they can meet the new requirements.

Scope of the Report

Although this report will assist clubs to identify their duties under the DDA and to take appropriate measures to ensure that they fully comply with the Act, the report is not a legal briefing, nor does it necessarily identify every activity that any particular club might be engaged in. If clubs identify that they are engaged in other activities, open to the public, that are not included in this report they would be wise to conclude that those activities are likely to come within the DDA. Equally, some of the provisions of the DDA (Part III) have yet to be tested in the courts against claims of discrimination. Therefore, a definitive answer to how the law might be interpreted in each and every circumstance is not always possible. However, the author is confident that the recommendations made in this report will ensure maximum compliance with the Act and clubs should be assured that if they follow the guidance given

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then they will significantly reduce the prospect of successful claims of discrimination being brought against them. In particular, chapter 6 identifies the steps that should be followed which enable clubs to produce an action plan to ensure that every aspect of their operations has been addressed.

The creation of an action plan will require an audit of club properties and operations. This, in turn, will lead to the identification of reasonable adjustments that the club needs to make to ensure compliance.

A major recommendation of the DDA Code of Practice is the need for training. The issues being addressed are complex. This is particularly true for clubs:

- who have large stadiums and a range of facilities.
- where commercial activity is a key aspect of club operations.
- where substantial numbers of staff are employed.

Even for clubs with fewer facilities and lower staffing levels it is essential that the Board address their requirements under the DDA and that there is at least one senior person who knows about the DDA and is able to take responsibility for putting together an action plan and seeing it through.

Finally, in order to avoid ambiguity and possible re-interpretation of what the law requires, some sections of this report quote directly from the DDA or its Code of Practice and the author acknowledges this.

Terminology

All football clubs providing goods, services and facilities to the public (whether charged for or not) have duties and obligations under the DDA. There are no exceptions. However, in producing this report some terms are used which might lead some clubs to believe that a

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particular section does not apply to them. For example, many "lower league" clubs refer to their "ground" - "stadiums" being regarded as belonging to larger clubs. Many clubs do not issue match day tickets but charge a cash admittance and, whilst increasing numbers of disabled people object to the terms "helper or carer" these terms are still often used. For the sake of clarity the following are terms that apply in this report.

"Stadium" also means football ground (and vice versa);

"Ticketing" also means match day cash admittance;

"Personal Assistant" covers carers, helpers, friends or family members.

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The Disability Discrimination Act (1995)



Chapter 2

The Disability Discrimination Act (1995)

The Disability Discrimination Act (known as the DDA) is the most powerful legislation yet for disabled people in the UK. It gives important rights by making it unlawful for some employers and all providers of goods, services and facilities to treat disabled people less favourably for a reason related to their impairment. The legislation is written in sections, known as "Parts of the Act". The Parts of most significance to Football Clubs are Part II - covering employment - and Part III - covering the provision of goods, services and facilities. This report focuses on Part III of the DDA.

The DDA Part III Code of Practice

The Act comes with a Code of Practice, an updated version of which was published in February 2002. This gives important information on how the Part III provisions are likely to be interpreted by the courts as well as practical advice on how to make (for example) reasonable adjustments. The Code states that, "it does not impose legal obligations, nor is it an authoritative statement of the law — that is a matter for the courts. However, the Code can be used in evidence in legal proceedings under the Act. Courts must take into account any part of the Code that appears to them relevant to any question arising in those proceedings. If service providers follow the guidance in the Code, it may help to avoid an adverse judgement by a court in any proceedings". The Code is then an important document which the Courts will take into account. The recommendations and observations made in this report are based closely on the Part III Code of Practice.

The DDA - Part III Provisions

The Act makes it unlawful for service providers to discriminate against a disabled person by:

- 1 Refusing to provide a service.
- 2 Failing to make a reasonable adjustment.
- 3 Providing a lower standard of service than they would otherwise offer.
- 4 Providing a service on worse terms.

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The following are examples of what the above might mean.

Item 1 - covers the most blatant form of discrimination where a disabled person is refused a service (not being admitted to the ground, being turned away from the club restaurant etc) solely because they are a disabled person. This also covers deliberately providing a poor standard of service to disabled supporters.

Item 2 – making reasonable adjustments is the cornerstone of the Act and is covered in detail in Chapter 5.

Item 3 – covers issues such as a disabled person buying goods from the club shop being served after non-disabled customers even though they have been waiting to be served for a longer time.

Item 4 – covers issues such as having to pay a deposit to use a club meeting room to cover possible damage when non-disabled people are not charged a deposit.

The DDA says that discrimination has occurred when a disabled person is treated less favourably, for a reason related to that person's impairment and where that treatment cannot be justified. A further way in which discrimination occurs is where a service provider fails to make a reasonable adjustment and cannot show that this was justified.

Reasonable Adjustments – Existing Duties

The requirement to make "reasonable adjustments" is central to the DDA. The Act recognises that many barriers exist which make it difficult or impossible for disabled people to use goods, services or facilities that other members of the public are easily able to use. Making a reasonable adjustment means taking action to remove or overcome those barriers.

Where a service provider offers services to the public (whether charged for or not) it has a legal duty to take reasonable steps to enable disabled people to have access to those services. This duty, which has been required since 1st October 1999, falls into three main areas:

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- 1 change a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled people to make use of its services;
- 2 provide an auxiliary aid or service if it would enable (or make it easier for) disabled people to make use of its services;
- 3 provide a reasonable alternative method of making its services available to disabled people where a physical feature makes it impossible or unreasonably difficult for disabled people to make use of the services.

The practical application of reasonable adjustments for football clubs is covered extensively in Chapter 5. However, one way of making a reasonable adjustment is through the provision of an auxiliary aid or service. The Act and Code of Practice give examples of what these might be. The following does not cover all that could be provided but they are a representative sample of what service providers should consider.

Auxiliary Aids and Services

The DDA says that, "a service provider must take reasonable steps to provide auxiliary aids or services if this would enable or make it easier for disabled people to make use of any services which it offers to the public".

"An auxiliary aid or service might be the provision of a special piece of equipment or simply extra assistance made available to disabled people from club staff".

The range of auxiliary aids or services that it might be reasonable to provide to ensure that services are made accessible could include one or more of the following:

- written information (such as a leaflet or guide)
- a facility for taking and exchanging written notes
- induction loops
- subtitles
- videos with BSL interpretation

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- information displayed on a computer screen
- accessible web sites
- textphones, telephone amplifiers and inductive couplers
- teletext displays
- audio-visual telephones
- audio-visual fire alarms
- qualified BSL interpreters or lipspeakers
- documents in large or clear print, Moon or Braille
- information on computer disk or e-mail
- information on audiotape
- telephone services to supplement other information
- spoken announcements or verbal communication
- assistance with guiding

Reasonable Adjustments – 2004 Duties

Significant new duties come into effect in October 2004 which are designed to help remove permanent barriers to accessing goods, services and facilities. From 1st October 2004, where a physical feature makes it impossible or unreasonably difficult for disabled people to make use of services, a service provider will have to take reasonable steps to:

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

What is a physical feature?

The Disability Discrimination (Services and Premises) Regulations 1999 make provision for various things to be treated as physical features. A "physical feature" includes:

- any feature arising from the design or construction of a building on the premises occupied by the service provider;

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- any feature on those premises or any approach to, exit from or access to such a building;
- any fixtures, fittings, furnishings, furniture, equipment or materials in or on such premises;
- any fixtures, fittings, furnishings, furniture, equipment or materials brought onto premises (other than those occupied by the service provider) by or on behalf of the service provider in the course of (and for the purpose of) providing services to the public;
- any other physical element or quality of land comprised in the premises occupied by the service provider.

All these features are covered whether temporary or permanent. A building means an erection or structure of any kind.

The Practical Implications of the New Duties

A building in England or Wales that complies with Part M of Building Regulations must make provisions for disabled people to gain access to and use the building. A building complies with Part M when its physical features (or aspects of physical features) accord with those described in the Approved Document M. This will make it "reasonably safe and convenient" for disabled people to access a building and use its facilities.

The government recognises that some providers of goods, services and facilities may have constructed new buildings or modified existing ones to the standards required by Part M Building Regulations that were in effect at build or modification date. Nevertheless, the access standards required by Part M and Approved Document M have been revised over the years (the latest revision was 1999 and the regulations are being reviewed again). The new DDA 2004 duties are intended to ensure that (particularly) older facilities are made more accessible by applying the test of reasonable adjustments where barriers continue to make access either impossible or difficult.

Whilst the new duties come into effect on 1st October 2004, the individual club duty may not

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have to be implemented on that date. The DDA provides an exemption in that a service provider who provides services from a building will not have to make alterations or adjustments to physical features which accorded with Approved Document M if 10 years or less have passed since their construction or installation. However, if a club does upgrade facilities that complied with a previous version of Part M then they will have to now comply with the most current version to ensure continued compliance. Clubs should also note that the Part M requirements are currently being revised and a new version is expected in 2003. It is likely that the new Regulations will remove the 10-year exemption for all new builds from 2003 onwards.

The following are examples of how the 2004 duty is (currently) likely to apply.

- A stadium built in 1977 will have an immediate requirement from 1st October 2004 to address permanent access issues.
- A restaurant or shop built in 1996 will have a requirement in 2006.
- A stand built in 1995 will have a requirement in 2005.
- A stand built in 1999 will have a requirement in 2009.

Any physical structure built or modified before 1994 has an immediate duty with effect from 1st October 2004.

In considering the above dates when clubs would be likely to have a new duty the following will also apply.

- The 10-year exemption is unlikely to apply if the Part M Building Regulations in force at the time of build were not met by the club. In such situations the club will face an immediate duty on 1st October 2004.

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- Clubs will need to establish exact completion dates for all stands in the stadium including the completion dates for facilities within those stands (which may differ) and for any other club property to determine the exact date from which they will have a requirement to address "physical features". For example, a stand completed on 1st June 1996 will have a "2004 duty" on 1st June 2006.

It is important to stress that the 2004 duties apply only to physical features, not to the services being delivered from the facility. Those have been subject to reasonable adjustments from 1999. In addition, Approved Document M does not cover all building access and design considerations. For example, signage and lighting levels are not covered by Part M but may be regarded as reasonable adjustments under the DDA, so adjustments to these may be required regardless of how recently the building was completed.

Structural or other physical changes that will not be required before 1 October 2004 include:

- widening doorways
- providing a permanent ramp for a wheelchair user
- relocating light switches, door handles or shelves for someone who has difficulty in reaching
- providing appropriate contrast in decor to assist the safe mobility of a visually impaired person
- installing a permanent induction loop system
- providing tactile buttons in lifts

From 1st October 2004 auxiliary aids and services could be any kind of aid or service (whether temporary or permanent). Until 1st October 2004 the Disability Discrimination Services and Premises Regulations (1999) temporarily restrict their meaning so as not to require the provision of auxiliary aids or services which involve a permanent alteration to the physical fabric of premises (or fixtures, fittings, furnishings, furniture, equipment or materials). There is nothing in the Act, however, to prevent such provision in anticipation of 1st October 2004.

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What does "Reasonable" mean?

Whilst the duty to take reasonable measures or steps is a requirement of the Act, prescribing what will be reasonable in each and every situation depends on local factors and is therefore not possible. A number of factors affect "reasonableness" and these are discussed below. However, taking no action at all to improve access to goods, services and facilities is not reasonable. The DDA requires clubs to anticipate that they will have disabled customers and plan accordingly. Thus, the first duty of the club is to meet the "anticipatory" requirement that they are likely to need to make some reasonable adjustments and change some policies and working practices. The most effective way to establish what this will entail is to audit club facilities, services and operations and draw up a schedule of possible reasonable adjustments. The club will then need to make a judgement concerning which of the identified reasonable adjustments are effective, practicable and affordable using the items listed below to aid decisions.

The Act says that what will be viewed as reasonable steps is likely to be guided by:

- whether taking any particular steps 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 steps
- the financial and other costs of making the adjustment
- the extent of any disruption which taking the steps would cause
- the extent of the service provider's financial and other resources. For football clubs this will include resources made available for player wages and transfer fees.
- the amount of any resources already spent on making adjustments
- the availability of financial or other assistance.

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The Code of Practice also states that "It is more likely to be reasonable for a service provider with substantial financial resources to have to make an adjustment with a significant cost than for a service provider with fewer resources" and; "If, having considered the issue thoroughly, there are genuinely no steps that it would be reasonable for a service provider to take to make its services accessible, the service provider is unlikely to be in breach of the law if it makes no changes. **Such a situation is likely to be rare**" (my emphasis).

Clubs should not interpret the above to mean that league status is a determining factor. Whilst it is generally true that "higher" league clubs are usually better resourced it is not automatically the case. It is the circumstances of each individual club that will be the key consideration. In addition, the personal wealth of the Chairman or Directors is not likely to be counted as available club resources but investments made in the club by them may well be regarded as club resources.

For many clubs, their major investment is often in stadium development. For these works, clubs usually receive grants which require them to meet access standards for disabled spectators. The majority of reasonable adjustments which a club may need to resource themselves will address club policies and practices. Government guidance points out that most reasonable adjustments are neither invasive nor expensive. This report will demonstrate that many reasonable adjustments are simple to implement and are well within the resources of most clubs.

Chapter 3

Who is a disabled person?



Chapter 3

Who is a disabled person?

Government census figures indicate that there are some 9.5 million disabled people in the UK. Most of these will be covered by the DDA and in practice, all those who require special facilities at football clubs, are likely to be covered. In most circumstances, where a disabled person requires a reasonable adjustment, it will be self evident that they are a disabled person. However, the Act also covers "hidden" impairments and in some circumstances people living with cancer, multiple sclerosis, muscular dystrophy and HIV infection and people with learning difficulties are also likely to be covered.

For the purposes of the Act, a disabled person is someone who:

- has 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; or
- has had such impairment in the past.

There are four parts to the definition.

1) A person with a physical or mental impairment:

includes mobility impairments, sensory impairments (hearing, visual) learning difficulties and mental impairment where it is a "clinically well-recognised illness"

Other people covered by the Act would include:

- people with severe disfigurements even where these do not directly affect day-to-day activity.
- people with progressive conditions such as cancer, MS or HIV infection are included from

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the moment that some effect on the ability to carry out day-to-day activities is experienced.

- people whose physical or mental impairment is substantially corrected or controlled by the use of prosthesis or medication
- Children under the age of 6 who would be deemed to be covered by the DDA if they were an adult.

2) impairment must have a substantial adverse effect

Substantial means "more than minor or trivial"

Note: it is the effect that the impairment has – not the severity of the impairment itself that is relevant.

3) The effect must be long term

- It must have lasted or be expected to last at least twelve months, or,
- It is likely to last for the rest of that person's life, or
- It is likely to reoccur if it is currently in remission.

4) Must adversely affect "normal" day-to-day activities

This means activities that are normal for most people, not specialised activities such as the ability to play a musical instrument. The following are the day-to-day activities covered by the Act:

- mobility
- manual dexterity
- physical co-ordination
- continence

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- ability to lift, carry or otherwise move everyday objects
- speech, hearing or eyesight
- ability to concentrate, learn or understand
- perception of the risk of physical danger

For the purposes of the Act, the guidance on the definition of disability issued by the government points out that in most situations it will be obvious that the person is a disabled person and checks on eligibility should therefore be minimal. However, there may be situations where the club is not certain that the person presenting as a disabled person is actually a disabled person as defined by the Act.

In such circumstances (which are likely to be exceptional) the club is entitled to ask the "disabled person" for evidence. In such cases, clubs should apply the same criteria as set out in the Act to determine whether a person is indeed a disabled person covered by the DDA. The criteria are:

- Does the person have an impairment?
- Does that impairment have an adverse effect on the ability to carry out normal day-to-day activities?
- Is the adverse effect substantial?
- Is the adverse effect long term?

It is likely that the definition of disability provided in Part I of the DDA will be amended by a forthcoming Disability Bill, due to be published at the end of the year (2003). Whilst we do not know the precise nature of any changes to the law, the definition of disability is likely to be extended, so that more disabled people will be covered.

Chapter 4

Legislation, Regulations and Codes of Practice



Chapter 4

Legislation, Regulations and Codes of Practice

Introduction

This chapter outlines some other regulations and codes of practice that clubs need to be aware of in meeting their duty to provide access to the stadium and other club facilities. Whilst the DDA is the central legislation under which claims of discrimination would be brought, other regulations and good practice guides are likely to be used by the courts in deciding whether discrimination has indeed occurred. This is because they either impose statutory duties or they have been accepted as setting standards that are widely regarded as being achievable within any particular industry.

Building Regulations cover building construction and design and the Part M regulations are intended to ensure that disabled people can access buildings. Building Regulations stand in their own right and where the requirements of those regulations have not been met, the service provider will have no exemption from the 2004 duties to remove physical barriers to access. This report does not deal with stadium design issues in detail and clubs are referred to other publications giving advice on how these issues should be addressed. In particular, the FSIF/FLA "Accessible Stadia" report gives detailed information on how the DDA and Part M regulations interact.

Building Regulations

Since 1985, the Part M Building Regulations have required that provision be made for disabled people to gain access to and be able to use new buildings (and some extensions). The Regulations were extended in 1992 and again in 1999. They now cover:

- New buildings, and
- Ground floor extensions to existing buildings but not the existing buildings themselves.

Guidance has been issued on how the Part M regulations are to be applied in the form of Approved Document M. This sets out 'objectives' to be met, 'design considerations' and

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technical details of design solutions (called 'provisions').

This means that whilst Part M establishes the duty to provide access, Approved Document M details the specifications (door widths, lift design, ramp gradients, toilet layout etc) by which the Part M requirements will be deemed to have been met. A new British Standard BS8300 has recently upgraded the specifications. The Part M Regulations are currently being revised and a new version is expected later in 2003.

Guide to Safety at Sports Grounds

Known as "The Green Guide", the latest edition contains a section on spectator accommodation for disabled people. In assessing its own status the Guide states; "The Guide has no statutory force but many of its recommendations will be given force of law at individual grounds by their inclusion in safety certificates issued under the Sports Grounds Act (1975) or the Fire Safety and Safety of Places of Sport Act (1987)".

The Guide is important for several reasons:

- It applies Building Regulations directly to those issues that concern disabled people regarding stadium design and access.
- It clarifies some points in greater detail than Part M concerning wheelchair spaces and stadium capacity.
- It defines some of the specific auxiliary aids and services that might be required by people with impaired hearing and vision.
- It sets out guidelines for viewing standards.
- It defines some of the safety issues that may limit access in certain circumstances (however, the DDA may require that these are addressed through reasonable adjustments).

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The courts are likely to view the Guide as an important document on the issues it addresses. Local Authority Planning Officers know its recommendations and they could be required (if stadium design and access were to be challenged) to provide a justification if the Guide recommendations have not been met.

The Football Task Force Report

Most football clubs will be familiar with the report "Improving Facilities for Disabled Spectators", which marked a new direction in stadium design and facilities. The report raised issues of concern and identified areas of good practice. Although it has no statutory force, The Task Force Report is important for the following reasons:

- It provides direct information on the major issues that disabled supporters have identified as important in accessing club services and facilities.
- It identifies many issues that are also requirements of the DDA. Thus, it helps in drawing up lists of identifiable duties to be met and actions required.

The courts are likely to view the Task Force Report as important because the football industry agreed to its recommendations and it is likely to be reasonable for clubs to implement what they collectively agreed to, subject to individual circumstances.

The NADS Audit Report

The National Association of Disabled Supporters has established itself as an effective force for change. Presently, its membership mostly consists of disabled supporters from FA Premier League, Football League and Nationwide Conference clubs. Their audit clarified further some aspects of the Football Task Force Report. Although the audit probably has no legal force, clubs would be well advised to note its contents. The report sets out the major areas of concern which disabled supporters have raised in accessing stadiums and facilities. In this respect, the report provides an indication of where disabled people may well raise issues around possible discrimination.

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The FSIF/FLA "Accessible Stadia" Report

Their comprehensive report brings together the major design and access considerations that enable compliance with both Building Regulations and the DDA. It will be essential reading for clubs who are building new facilities and the courts are likely to view this document as detailing the standards that should be met. For existing facilities, the report can be used as a template against which the level of access to the stadium and other facilities can be measured.

The report will also be useful for clubs seeking external consultants to carry out audit work. There is a chapter devoted to advising clubs on what skills they should be seeking from possible consultants as well as practical advice on how to set a consultancy brief for audit work.

The report will be influential, not least because of the signatories to it. These include the Football Licensing Authority, FA Premier League, Football Association, Football League, the National Association of Disabled Supporters (NADS) and the Office of the Deputy Prime Minister. In viewing the report, the courts are likely to conclude that the signatories agree that its contents set the standards to be met and that attaining those standards is likely to be viewed as reasonable.

Chapter 5

The Practical Implications of Part III of the DDA



Chapter 5

The Practical Implications of Part III of the DDA

Introduction

This report seeks to inform clubs on where they are likely to have duties under the DDA and to give advice on how those duties can be best met. This chapter focuses on the cornerstone of the Act, the duty to make "reasonable adjustments". The overarching requirement of the DDA is not to discriminate against disabled people, the duty to make reasonable adjustments requires that clubs take positive action to ensure that goods, services and facilities, which are currently difficult or impossible for disabled customers to use, are made accessible.

The duty applies regardless of club size or league status. It is clear that the range of goods, services and facilities available, and the demands made on them, differ vastly across the clubs covered by this report. Further, the financial and other resources available to clubs to meet their duties also differ substantially. However, league status is not the key criteria in determining the range of reasonable adjustments that a club may need to consider but rather the resources available to the club to make such adjustments.

Clubs will want to know what is "reasonable" for them. This chapter illustrates how the law might apply. However, before discussing the reasonable adjustments clubs might have to consider, some general principles should be stated.

- Every football club providing goods, services and facilities to the public is included within the Part III provisions of the Act.
- The law requires that clubs make reasonable adjustments in anticipation that they will have disabled customers. Thus, a club cannot wait until a disabled customer makes a request before taking action. Doing nothing to improve access to goods, services and facilities is not an option.
- Notwithstanding the above, a club is also required to consider reasonable adjustments for

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individual disabled people over the collective adjustments it may already have made.

- The greater the resources available to the club the more extensive will be the requirement for reasonable adjustments.
- In general, the greater the demand from disabled people to use club facilities (including non-match days) the more extensive will be the requirement for reasonable adjustments.

In the following sections the suggested reasonable adjustments conform with the Part III Code of Practice. Other documents are mentioned where they have implications for football clubs. In particular, Part M Building Regulations and Approved Document M will apply to most actions covering physical access to the stadium and other facilities.

The level of expertise on DDA issues varies between clubs but it is generally believed that most do not have an awareness of how wide their duty not to discriminate is. Many clubs base their policies towards disabled spectators on concessionary ticketing, stadium access and match day facilities. Whilst these are naturally included there are many more activities where clubs have duties under the DDA, each of which is likely to require actions to make them fully accessible to disabled people. The following are the major areas identified as affecting most clubs. Each section gives examples of reasonable adjustments and any other actions the club is likely to have to consider to ensure compliance with the DDA.

Club Policies

Although clubs have no legal duty to have written policies covering the provision of services to disabled people, they are strongly advised to develop them. The Code of Practice says that, "In legal proceedings against a service provider based on the actions of an employee, it is a defence that the service provider took such steps as were reasonably practicable to prevent such actions. A policy on disability which is communicated to employees is likely to be central to such a defence. It is not a defence for the service provider simply to show that the action took place without its knowledge or approval".

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Clubs should be aware that the duty not to discriminate applies to all those engaged in activities on their behalf (whether employed or voluntary) from the most senior to the most junior person. Therefore, the policy should make it clear to all that it is unlawful to discriminate against disabled people".

Developing a club policy (example in Appendix 2) is a useful starting point for developing a plan of action. This clear statement of intent enables the club to commence on a programme that will lead to:

- the recognition of the need for an audit that covers physical aspects such as the stadium and its facilities, club shops etc and operations such as ticketing, merchandising etc. The FSIF/FLA report gives information on what the club should expect from anyone appointed to do this work.
- the identification of staff training needs.
- a basis for consultation with disabled supporters.

It is important that the club identifies a person responsible for overseeing the programme. For those clubs already employing a Disability Liaison Officer, that would seem to be the appropriate person. For other clubs, the person should be someone vested with the power to implement club policies.

Once developed, club policies should be published. Useful outlets for informing disabled people on these policies would include match day programmes, club websites and the Annual Report.

Section 1. Stadium Issues

Clubs must permit disabled supporters entry to their stadiums and they have a duty to make reasonable adjustments or provide auxiliary aids or services to ensure that disabled people can access their facilities.

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The DDA does not stipulate the extent to which provision should be made with respect to the number of spaces to be provided for disabled people. This matter is dealt with in "The Green Guide" and the FSIF/FLA "Accessible Stadia" report gives further comprehensive advice on this matter.

In larger stadiums (defined in the Green Guide as more than 10,000 spectators) a sliding scale of the number of wheelchair spaces that should be provided has been stipulated. Wheelchair bay dimensions and arrangements for Personal Assistant seating should conform to BS8300 and the PA should be able to sit alongside the disabled person. Many "lower league" grounds do not have defined (marked out) wheelchair bays and, where there is no pressure for space from wheelchair users then spaces need not be marked. All clubs should ensure the best possible viewing arrangements for disabled supporters including a choice of viewing positions in new build stadiums or stands (including raised platforms), ensuring that the match view is not disrupted by others passing in front of the viewing area, appropriate seating for ambulant disabled spectators, provision for people with other impairments and where possible, all disabled supporters should be under cover and protected from the elements.

The Green Guide and BS8300 give further information on these matters. In particular, the FSIF/FLA report will prove to be especially useful to clubs in ensuring that stadium access and facilities conform to the DDA. This useful publication provides the latest recommendations as well as worked examples on what constitutes good stadium design for disabled spectators.

Stadium Facilities

Clubs also have duties to provide access to internal stadium facilities and other "off site" facilities using reasonable adjustments where required to make them accessible. The new duty to remove physical barriers, which comes into effect in October 2004, applies also to these internal facilities. In addition, the 10-year exemption rule also applies to facilities. In practice this means that:

- a club lounge upgraded in 1999 will be covered by the new duties in 2009.

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- VIP boxes upgraded in 1994 come under the new duties from 2004.

Until such time that the Club has a 2004 requirement to consider how a physical feature can be permanently removed, it should address access issues by making reasonable adjustments.

The Green Guide, Football Task Force and FSIF/FLA reports recommend that wheelchair access should be provided to all social and retail outlets in new grounds or developments and that provision should also be made for wheelchair access to social and retail facilities at existing grounds.

The range of facilities that clubs own vary widely. Football League clubs are likely to have a greater range of facilities than (say) Conference or Feeder League clubs and they are also more likely to have the resources to make more extensive reasonable adjustments.

The DDA Code of Practice states, "It is more likely to be reasonable for a service provider with substantial financial resources to have to make an adjustment with a significant cost than for a service provider with fewer resources. The resources available to the service provider as a whole are likely to be taken into account as well as other calls on those resources".

The Act applies to all facilities "which members of the public are permitted to enter". If the club has any facilities which are strictly private (i.e. private members club) then they are exempt from the provisions of the DDA.

Health and Safety

The Health and Safety of spectators, including disabled spectators is a key issue for football clubs and the DDA recognises this. The law does not require clubs to provide a service or make an adjustment if in doing so it endangers the health or safety of anyone, including posing a risk to the disabled person themselves.

However, the Code of Practice makes it clear that invoking health and safety practices which deny services or facilities to disabled people must not be based on generalisations or

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stereotyping (e.g. all wheelchair users are fire risks). Such practices are likely to be unlawful. Rather, service providers must first consider whether appropriate reasonable adjustments would enable the health and safety issue to be resolved.

Section 2. Ticketing Issues

Ticketing Policies

There is no legal requirement to have a written ticketing policy but given that a written policy could be a defence against claims of discrimination, it would be advisable to develop one. It is important for clubs to be clear about the basis on which they offer concessionary prices and which disabled supporters might be eligible. An example will illustrate why this is essential.

The DDA says that discrimination also occurs between disabled people where one disabled person is treated less favourably than another disabled person for a reason related to their impairment. Statistics show that more than 10% of the population are disabled people. Suppose that a club has an average home gate of 5000. This could mean that a significant proportion of those spectators may be disabled people covered by the DDA. Of course, the club is not aware of this because most disabled spectators can easily access the stadium and make no request for special facilities or assistance. However, the club currently offers a discount to wheelchair users solely on the basis that they are disabled people. Under the DDA the club might be obliged to offer all other disabled people the same discount.

If this were implemented the negative financial impact would be substantial and the administration required to deal with concessionary tickets and match day admittance would be equally onerous. Alternatively, withdrawing concessions (especially where they already exist) would prevent many disabled people from attending matches and the resultant bad publicity would do the club no good either. Whilst this might seem like a dilemma, the DDA provides for a simple solution to this matter.

Concessionary ticket eligibility

If the concessionary ticketing policy is based solely on impairment (disabled people are given a

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discount because they are disabled people) then all disabled people entering the stadium are likely to be entitled to a discount. The club needs to define who will be entitled to a concession and it vastly reduces the entitlement if it does not focus on the disabled person's impairment, but focuses on disabled people for whom a reasonable adjustment is being provided for under the DDA. Thus, a ticketing policy that relates discounts to certain sections of the stadium or the need for the provision of auxiliary aids or services is not based on impairments and disabled people not accommodated in those sections could not claim a discount unless the club, knowing that they are a disabled person, has itself allocated them to another area of the stadium because all the "disabled spaces" are occupied.

Therefore, the club's concessionary ticketing policy should relate to:

- a) designated viewing areas in the stadium such as wheelchair platforms or viewing areas, and/or
- b) the need for personal assistance support in order to be able to attend the match,
- c) the need for the provision of other auxiliary aids or services such as access to a match commentary system or the provision of special seating for ambulant disabled people.

There are some other disabled people who may not be seated in designated seating areas to whom the concessions should apply. These would include people with learning difficulties or people with progressive conditions who require personal assistance support. In both cases, these spectators should be encouraged to bring a PA with them.

The Code of Practice states that it will be apparent that a disabled person is a disabled person in the vast majority of circumstances. However, if a club is unsure that a person requesting a concession is a disabled person they are entitled to seek evidence. Reference should be made to chapter 3 of this report in such circumstances.

Finally, some clubs allow their Disabled Supporters Association to decide who is eligible as a disabled person for concessionary tickets. This is not unlawful but clubs must be aware that such groups are acting as agents for the club. If the group discriminates then a claim is likely

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both against them and the football club. The club should assure itself that the procedures used to decide eligibility have been agreed with the group and that it also has appropriate liability insurance. Note that clubs cannot insist that disabled supporters join the Disabled Supporters Association in order to qualify for a concession. The reason for this is that most clubs offer other concessionary tickets to individuals who are not required to join a club (such as children, pensioners etc) so such a requirement for disabled people may be considered to be "less favourable treatment".

Ticket Administration

The objective of effective ticket administration is to ensure that disabled people have at least as good access to tickets as do non-disabled spectators. This applies to sales outlets as well as the methods by which tickets are obtained. The following are examples of how the DDA is likely to impact on ticketing administration and sales.

Season tickets

Where clubs issue season tickets, they often ask the applicant to complete a standard renewal or application form. This practice is likely to discriminate against some disabled supporters (e.g. those with visual impairments or dexterity impairments) and reasonable adjustments must be considered. These might include allowing an application in the disabled persons own preferred format, allowing applications by Email or telephone or textphone.

It is also important to recognise that some people will become disabled across the course of a season. In these circumstances consideration needs to be given as to what steps should be taken to make reasonable adjustments in the course of a season. Even where season tickets do not allocate a specific seat it may be necessary – in the case of some disabled supporters (for example, people with visual impairments) – to have some reserved seating.

Sales Outlets

Where access to the match by ticket is the norm, it is likely that the club will have sales outlets that will be staffed and open for business most of the week. These could comprise of a ticket office at the stadium, tickets sold at club shops and tickets sold through ticket agencies. For

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each of these sales outlets the club will need to consider reasonable adjustments to make them accessible to disabled people.

Reasonable adjustments might include:

- Having a named club person who can advise disabled spectators on ticket access and availability.
- Providing an Email address and textphone in the ticket office.
- Making access to the Ticket Office which could include external access (level entrance, nearby car parking), providing an induction loop, lowering a sales counter area and having sales staff who have been trained on the DDA Part III provisions.
- Making similar provision for access to the club shop.
- Providing facilities to book tickets via the club website.
- Ensuring that ticket agencies can either sell tickets direct to disabled spectators or can provide information on where tickets can be purchased.

Clubs should note that if tickets are sold on match days to non-disabled supporters then they must provide the same facility for disabled supporters. As with non-disabled supporters these would be available on a "first come first served" basis.

Ticket and Match Day Admittance Pricing

Clubs employ a wide variety of charging practices. These range from charging disabled spectators full price, to charging a reduced price, to admitting them free of charge. The same practices also apply to Personal Assistants (PAs) who accompany disabled people. Clubs should review their charging policies to ensure that they do not discriminate either between disabled and non-disabled people or between disabled people themselves.

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The decision on how much to charge disabled spectators and their PA is for each club to decide. Offering concessions is legal as the DDA allows for "more favourable treatment". Clubs currently offering concessions are encouraged to continue to do so. Some "lower league" clubs, where admittance charges are lower anyway do not offer concessions – this practice can also continue. However, there are some factors concerning possible discrimination under the DDA that clubs need to take account of. These are summarised as follows:

Offering different concessions to people with different impairments may be unlawful. The Code of Practice states: "The comparison can also be between the way in which one disabled person is treated compared to the way in which people with other disabilities are treated". Thus, offering a concession to (say) a wheelchair user that is different from the concession available to (say) an ambulant disabled person may be illegal, unless there are good reasons to do so. An example of where disabled people could be charged differently is where they occupy areas of the stadium that offer superior facilities.

Charging a disabled person and their PA in total more than the full price of a single ticket is likely to be unlawful if the disabled person could not access the stadium without a PA. The provision of a PA to enable access is likely to be regarded as a reasonable adjustment. The DDA does not allow service providers to "pass on" the cost of reasonable adjustments to disabled customers. Therefore, the club will be deemed to have charged more for the same service than it would have charged a non-disabled person. If the club is uncertain that the disabled person requires a PA then it is entitled to ask for evidence.

However, charging a disabled person and their PA no more in total than the standard or concessionary charge is likely to be lawful. The club is charging no more than it is charging other people.

In practice, the club should seek to operate policies and practices that are effective and simple to follow. This report has stated that where special provision is already being made for disabled spectators it will be obvious that they are disabled people covered by the DDA. It will also be obvious that many of these people will need a Personal Assistant to enable them to

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access the stadium on match days. And, whilst the club cannot insist that they do bring a PA (unless there are sound health and safety reasons) they should encourage them to do so.

Clubs should recognise that the service they are providing is to the disabled person and good practice should then mean:

- That if a ticket or admittance charge is made it should be to the disabled person.
- Personal Assistants should be admitted free and should be regarded as an auxiliary service. This will be of direct benefit to the club as explained in the section on PAs.

There are two final issues that clubs must consider concerning ticketing matters. First, where the club offers free match day tickets to external groups and organisations (schools etc) then those allocations should take account of the fact that disabled people could be part of that group and may also be entitled to use the allocation. For clubs who have spare capacity this is not likely to be a problem. However, where matches are "sold out" or all the designated spaces are already taken this poses a problem. However, offering free tickets to (say) young people is regarded as a part of building future support and stopping these allocations (because disabled people cannot be included) is likely to be viewed as a disruption of the club's business. A justification for not making a reasonable adjustment is where unjustifiable disruption would be caused to the business so in those circumstances it is likely to be justifiable for the club to offer free tickets that does not include an allocation to disabled people who require designated spaces.

And, whilst this report does not cover the employment provisions of the DDA (Part II), clubs should be aware that benefits offered to employees must also be offered to disabled employees. Thus, if tickets were part of staff benefits they would also apply to disabled staff employed by the club.

Ticketing issues for away matches

Admittance to away matches by ticket only is the norm for some clubs and they receive an

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allocation of tickets from the home club. Even for lower league clubs, ticket allocations may be given where "local derby" matches or "cup ties" ensure that matches are sold out. This can mean that there will be more applications for tickets than there are tickets available. To ensure that disabled spectators have the same opportunity to purchase tickets, the same rules that apply for non-disabled spectator applications should also apply here. For example, if clubs give priority for tickets to season ticket holders then they should also give priority to disabled season ticket holders. If tickets are sold on a "first come first served basis" and this involves queuing for tickets then clubs should be aware that this might not be possible for some disabled people and reasonable adjustments (telephone applications etc) should be made. Clubs should also ensure that tickets for designated areas (wheelchair space) go to appropriate users.

Some clubs offer away match packages that might include transport and match ticket. At present, disabled people are not given enforceable rights for accessible transport under the DDA and the club is likely to have no duty to provide accessible transport. However, the club does have a duty to provide information on such packages to disabled supporters.

Personal Assistants

The Code of Practice states that providing reasonable adjustments could include providing "human" assistance to enable disabled people to access goods, services and facilities. This would be the provision of an auxiliary service. Clubs may need to recruit additional personnel to guide people to the stadium from car parks, assist them to their seats and viewing areas and obtain refreshments for them. A useful way to meet this requirement is to enable the disabled person to bring his or her own personal assistant who would then be regarded as providing this service. It would be a valid condition of entry that the PA sits with the disabled person to assist him/her.

Whilst clubs might encourage disabled spectators to bring a PA (particularly those who have identified a support need) the club cannot refuse admittance to a disabled person who does not bring a PA with them unless there are valid health and safety reasons for doing so.

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Clubs should also be aware that young people often provide personal assistance to disabled adults. The law does not set a minimum age for a PA. Provided that the person is able to provide the required support to the disabled person then it is unlikely that the club can impose age restrictions. In addition, it is also not uncommon for one disabled person to provide support to another disabled person and it is valid to regard a disabled person as a PA for the purposes of the Act.

Section 3. Match Day Issues

Car Parking

Clubs providing vehicle parking spaces on match days (whether charged for or not) have a duty to provide the facility to disabled supporters, including disabled away supporters.

Good practice guides (Task Force Report) recommend that these be located as close to the ground as possible and the DDA Code of Practice endorses this point by observing that service providers must not make it "unreasonably difficult" for disabled people to use their services. The Code states further, "when considering if services are unreasonably difficult for disabled people to use, service providers should take account of whether the time, inconvenience, effort, discomfort or loss of dignity entailed in using the service would be considered unreasonable by other people if they had to endure similar difficulties".

Because there is an individual duty as well as a collective duty to disabled people, consideration for reasonable adjustments must also take account of individual requirements. This means that it is likely to be reasonable for a disabled person to request a parking space at the stadium. In considering what is reasonable, the nature of the impairment and the degree of assistance available (do they use a PA?) might be factors to be taken into account.

The technical specifications covering parking provision (number of spaces, locations etc) are covered in detail in BS8300 and the FSIF/FLA "Accessible Stadia" report. Clubs are referred to those documents accordingly.

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At some stadiums, parking facilities are at a premium and may well be sold as part of match day packages to (mostly) corporate clients. This raises a number of considerations. First, it may well be the case that corporate clients include disabled people and their requirement for parking spaces should be met as part of the agreed package. Concerns are likely to be raised where the effect of giving a "non-package" parking space to a disabled person means having to move or deny a space to a corporate client. The DDA allows providers not to make reasonable adjustments if the result would be a disruption of business. Therefore, if the effect of moving the corporate client is a breach of contract or could lead to the loss of business then the club may be justified in not providing a parking space in the car park for a disabled person.

Car parking allocation can be problematic where spaces are at a premium and where there is competition for spaces between disabled people with different impairments and needs. Clubs may need to be imaginative in their approach and some of the practical approaches to resolve car parking difficulties might include:

- Ensuring the required number of parking bays at stadium car parks and, where possible, providing an excess to meet anticipated future demand;
- Stewarding "disabled" bays to ensure their correct use on Match Days;
- Asking the Local Authority to create on street bays near the stadium;
- Operating a "drop off" point at the stadium for disabled passengers;
- Operating accessible "shuttle" services between non-stadium car parks and the stadium.

Provision of match day information

Clubs should ensure that disabled supporters have access to appropriate information on match days. This may include information on emergency procedures and stadium egress as well as information on facilities such as toilets and catering outlets. Much of the latter can be provided to most spectators through appropriate signage and steward assistance. Other facilities that are likely to meet the requirement to provide match day information would include:

- Public safety announcements.
- Announcements on team selection, goal scorers, substitutions etc.

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- External signage including disabled parking bays, drop off points, entrance direction signage, entrance gate signage.
- Direction and facilities signage within the stadium.
- Stadium video boards.
- Executive Box audio systems.
- Football commentary facilities.
- Evacuation procedures for disabled spectators.
- Match Day programmes.

Catering and Refreshments

Clubs must provide adequate and appropriate catering facilities to disabled spectators. In new stadiums and new or re-developed stands, provision should be made for lower catering counters which disabled people can access. However, in older stadiums and in many lower league grounds catering facilities are often located at the back of stands and are likely to be inaccessible to many disabled people. Access to such facilities should be considered as a key 2004 duty for most clubs. However, in the meantime, reasonable adjustments are possible that will enable disabled people to access refreshments. For the sake of clarity, clubs will have a duty to make structural adjustments to any inaccessible catering facilities from October 2004 (or 10 years from the stand build date).

The earlier section on "Personal Assistants" stated that where PAs accompany disabled people (and no charge has been made) then the PA can be regarded as an auxiliary service and would be expected to meet the disabled spectator's needs. However, not all disabled spectators who cannot access the catering facilities will bring a PA with them. For those people the club might consider whether "at seat catering" or "steward assistance" would enable it to meet the duty of a reasonable adjustment.

Toilet facilities

A basic requirement of Part M Building Regulations is the provision of adequate and appropriate toilet facilities for disabled people. Toilet locations should be clearly signed and their use by non-disabled people prohibited either through fitting RADAR keys or through

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steward supervision. Guidance on the provision of adequate toilet facilities has recently been updated and reference should be made to the FSIF/FLA "Accessible Stadia" report for the specific requirements to be met.

Match Day Reasonable Adjustments

The following are all likely to be regarded as reasonable adjustments on match days:

- the provision of wheelchair bays or spaces.
- seating for ambulant disabled people.
- appropriate toilet facilities.
- access to catering outlets.
- access to a commentary system for blind spectators (where reasonable to do so).
- provision of match information (scorers, substitutions etc) via a Public Address system.

In addition, where PAs are not admitted free of charge and cannot therefore be regarded as an auxiliary service it is likely to be reasonable for the club to ensure that stewards or other staff are available to assist with catering needs and guidance to seating and viewing areas.

Because the club has an "anticipatory" duty then general access provisions should already be in place. So, unless the disabled supporter has additional individual access requirements (that the club could not have anticipated), then in principle access cannot be refused just because prior notice was not received. Thus:

- If tickets are sold on Match Days to non-disabled supporters then they should also be available for purchase by disabled supporters – subject, of course, to them not already being sold out.
- Access to bars, restaurants etc where access has been provided and where non-disabled supporters are generally allowed should not be refused.
- However, if disabled people expect access to special facilities that do need advance notification (and that can be justified) such as radio commentary headsets then it is likely to be justifiable for the club not to provide that service on that occasion.

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The Practical Implications of Part III of the DDA



Clubs should also take account of the needs of disabled people who use Assistance Dogs. These are highly trained assistants to people with visual, hearing or mobility impairments. It is unlikely that the club would be expected to make a general provision for Assistance Dogs but each application for a reasonable adjustment (quiet room for dog during match, water bowl etc) would have to be viewed on its own merit.

Match Day Stewards

All persons providing services for the club, regardless of whether they have contracts or whether they are self-employed come under the DDA and, as such, the club is directly responsible for their actions. Stewards provide essential services to the public and may be regarded as an auxiliary service under the DDA. Among the duties it might be reasonable to expect them to perform are the following:

- Giving directions to disabled people to appropriate entry gates.
- Assisting disabled people from drop off points into the stadium.
- Ensuring that disabled parking bays are correctly used.
- Ensuring safe crowd flow through club shops.
- Supervising disabled toilet access.
- Assisting access to lower counters at catering and other concourse facilities.
- Lounge stewards might carry food for disabled customers if service is self-service.

At FA Premier and Football League clubs, stewards are trained according to the "Training Package for Stewarding at Football Grounds" (and many "smaller" clubs' stewards are trained by local larger clubs in a supportive relationship). The training programme for stewards has recently been revised to include a DDA component and in due course, all stewards are likely to be trained on the new module.

However, if a club is arranging DDA training for other staff then they should consider the need to make this training available to at least senior stewards and stewards whose roles are dedicated to disabled peoples areas in the stadium.

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Section 4. Other Club Operations

Provision of Information

A service provider has a duty to change policies (and practices) that make it impossible or difficult for disabled people to use their services. Providing information is seen as a key requirement of the Act, especially where this is information on the goods, services and facilities that the club has available. If disabled people are not able to get appropriate information in accessible formats then this in itself will prevent some disabled people from purchasing match tickets, buying club merchandise or using club facilities. Where the club does not make information accessible the Code of Practice states, "In such a case, the service provider must take such steps as it is reasonable for it to have to take, in all the circumstances, to change the practice so that it no longer has that effect".

Providing appropriate information applies to many services that clubs operate and appropriate reasonable adjustments may include:

- large print price lists in club shops.
- larger price labels.
- booking forms in large print or Braille etc.
- provision of Textphones in shops and ticket booking offices.
- accessible web sites.
- an audio taped commentary for a stadium tour etc.

Section 5 of the DDA Code of Practice gives many more examples.

Web Sites

Many clubs (including those with modest resources) run web sites. Some of these are promoted and hosted by independent companies (Premium TV for example). The Disability Rights Commission is concerned that the majority of web sites are inaccessible to large numbers or people with visual impairments and they are commissioning research to provide solutions for good web site design. Some standards do exist. The world standard (covering

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fonts, contrasts etc) is known as W3C and there is also a downloadable programme known as Bobby which checks for site accessibility.

It is not within the scope of this report to suggest reasonable adjustments for complex web design issues. However, where the service is being provided externally to the club it is the host provider who has the duty to make the site accessible. For smaller clubs, where sites are often developed by volunteers, the club should be aware that it has a duty to make its site as accessible as possible and it should at least use Bobby (details in appendix 1) to check current access levels.

Commercial Activities

These cover activities such as the sale of executive boxes and match day packages including meals and reserved seating. Also included would be other activities such as the hire or sale of facilities for weddings, seminars, business meetings, fans forums and the club AGM etc. As with other facilities, they should be accessible to disabled spectators using reasonable adjustments where required. Some of these facilities are already accessible at many stadiums but it is often the case that they are not advertised as being accessible. Where a facility is accessible, the Code of Practice states that, "it is important to draw its existence to the attention of disabled people". This might require better signage to indicate the location of lounges and bars that can be used. It may also mean that clubs need to highlight accessible facilities in publicity or marketing materials. "In all cases, it is important to use a means of communication which is itself accessible to disabled people".

Merchandising

This generally covers club shops although transactions by mail order would also be included here. The key requirement is for access to the shop and the goods on offer. Clubs can use a number of reasonable adjustments at present but must be mindful of the 2004 requirement to consider how permanent barriers can be removed. The following illustrates this point. A club shop has a step at the entrance which prevents access to wheelchair users. The Club can install a temporary ramp as a reasonable adjustment. Another club has a shop located on the 1st floor which is inaccessible to many disabled people. A reasonable adjustment would be

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that staff bring goods down to disabled people for them to purchase. The 2004 duties would require the first club to consider the installation of a permanent ramp and the second club to consider the installation of a lift or (if that is not possible) the relocation of the shop to ground level.

Under the 1999 duties to make reasonable adjustments the following are some that could be considered:

- providing ramps.
- improving access to entrances.
- providing lower counter areas.
- providing cheque-signing pads.
- making price labels larger and more legible.
- ensuring that people using assistance dogs can access shops.
- providing staff support for disabled people in retail outlets who are unable to (say) lift stock items.
- providing British Sign Language (BSL) interpreters and lip readers.
- providing information in accessible formats.

Sponsors

Most clubs have main sponsors. In many cases this entails a sponsor making financial contributions in return for the club promoting their name. For many smaller clubs the sponsor is often a business owned by the Chairman or a Director. Where the relationship between club and sponsor is as above then there are no direct implications under the DDA.

However, where a club has a relationship with a sponsor which includes supporters being offered (say) discounts on products or competition prizes then there may be a duty to make these accessible to disabled people. The Code of Practice says it is essential to establish who is providing the service. The Code states, "A service might appear to be provided by more than one service provider" each of which are likely to have duties under the DDA to make the goods or services accessible. The important point is that clubs must not knowingly enter into

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contracts that are unlawful (i.e. they cause one or more parties to discriminate under the DDA).

Not all sponsors are businesses and Match Day and Match Ball sponsorship are examples of where small groups or even individuals can provide sponsorship on an occasional basis. Clubs should note that disabled people have the right to be sponsors and receive the same "rewards" offered to other sponsors.

Supporters Clubs

Where clubs run their own supporters clubs they have a duty to make them (including children's or young adults supporters clubs) accessible to disabled people. This is regardless of whether they also run a separate disabled supporters club or not. Membership of the main supporters club should not be denied to disabled supporters.

Clubs should be particularly mindful that the DDA applies to disabled children as well as to disabled adults. The Act states, "An adult or child has protection from discrimination under the Act if he or she is a disabled person". Thus, disabled children should have the same opportunities as other children who might have access to parties or special events and the right to be selected as the Match Day Mascot.

Football Academies and Centres of Excellence

Whilst the criteria for selection to Academies is football skill and potential, clubs should be aware that disabled people could still be students. People with learning difficulties and those with dyslexia (for example) may be covered by the Act. Therefore, much of what has already been stated applies here and clubs may have to make reasonable adjustments. This could include giving personal support and providing information in appropriate formats.

Football in the Community Scheme

The introduction of new provisions under the Special Educational Needs and Disability Act 2001 requires that disabled children be accommodated in school activities, including outside of school premises and this includes FICS provisions.

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Also, as previously mentioned, where other services such as free match tickets are given out these are also likely to fall within the DDA and disabled children and young people will be entitled to access those benefits where it is reasonable for them to do so.

Community Activities

Where the club offers the use of its premises to other groups (charged for or not) it has a duty to provide reasonable access to that facility. The provision of further reasonable adjustments including auxiliary aids or services for those participating in meetings etc is the responsibility of the group using the facility.

Consultation

The Code of Practice is keen to emphasise the need for consultation with disabled customers and, where appropriate with disabled staff and organisations of disabled people.

Disabled people know best the difficulties they encounter in trying to access the club's goods, services and facilities. They are a valuable source of information in identifying the reasonable adjustments that the club may need to consider. In addition, external organisations of disabled people often have extensive experience and skills which clubs could utilise to the mutual benefit of both club and supporters. For example, they may have DDA knowledge and may already be running training programmes on DDA issues.

Chapter 6

Addressing the Requirements of the DDA



Chapter 6

Addressing the Requirements of the DDA

This report has provided information on the range of activities where clubs are likely to have a duty under the DDA and has offered solutions to enable compliance with the DDA for each activity. However, ensuring that all areas are covered and all required actions are put in place entails more than choosing activities in a piecemeal manner. To be effective, the club needs to develop an action plan to ensure a systematic approach. Some of the components of the action plan will be found in the Part III Code of Practice and in that Code they are referred to as "defences". The Code considers these as important actions for service providers to take and being able to show that these actions have been taken will be a possible defence against claims of disability discrimination. Defences mentioned in the Code include devising policies, auditing premises, policies and practices, consulting with disabled customers and disability organisations and training staff on DDA issues.

The following are suggestions on how a club might approach this work. They may not be the only way to approach the task in hand and clubs may have their own ideas on these matters. However, for clubs with little knowledge on DDA issues they provide a way forward. In order to work towards full compliance with the Act, the club needs to take a number of logical steps. These are detailed as follows:

Step 1 – Appoint a Key Person

The Club should (ideally) designate a Board Member to oversee the programme and should also appoint a senior staff person to take day-to-day responsibility for implementing club policies including the actioning of identified reasonable adjustments.

Step 2 – Create the Club Policy

Clubs should create a central policy setting out their commitment to meet their duties under the DDA. It is important that the policy makes it clear that discrimination against disabled people, either as spectators or customers, will not be tolerated. An example of a central club policy is shown in appendix 2. The Code of Practice states that the policy should be

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Addressing the Requirements of the DDA



communicated to all staff and any other persons engaged in work (including voluntary work) for the club. The club may also wish to create additional written policies for areas where clarity is required. This report has shown that a ticketing policy which identifies eligibility and concessionary pricing might also be useful. However good a written policy is, it is only effective if it provides a basis for further action.

Step 3 – Carry out an access audit

This should be a physical audit of all club properties and will include all those facilities which may be accessed by the public. This will usually include the stadium, club shops including those in city or town centre locations, and other facilities such as education or leisure centres. The audit should also include internal stadium facilities such as executive boxes, lounges, bars, restaurants, disabled toilets and concourse catering, betting and programme sale points. For larger clubs with extensive resources this will be a major project and the club would be well advised to use the services of an external consultant. Appendix 1 gives some sources for consultancy work. In addition, the FSIF/FLA report gives sound advice on the skills required of the consultant engaged to carry through the audit. Importantly, the person should have detailed knowledge of the DDA and they should know how to identify and apply reasonable adjustments.

For clubs with fewer resources (including the resources to fund consultancy work) a different approach might be possible. Where the audit work is not extensive it might be possible for the club to do its own audit using the templates provided in the FSIF/FLA "Accessible Stadium" report. In addition, the club should try to find out if any of its disabled supporters are knowledgeable on the DDA and, if so, they could assist the work. Alternatively, there may be local organisations of disabled people who could assist the club. Sources for finding these organisations are given in Appendix 1.

To assist the audit, the club will need to establish build and modification dates for all club properties as these dates are needed to establish exactly when the club will come under the 2004 duties. At the end of the audit the club should be able to draw up a schedule of works for each property and each facility within a property. This will allow works to be costed and

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scheduled and included in the action plan.

Step 4 – Audit club operations and activities

This involves an analysis of all areas of operation that have been detailed in Chapter 5. The objective of this audit is to:

- Identify existing policies and practices that may discriminate against disabled people and to rectify these;
- Identify reasonable adjustments that may be required to provide access to goods, services and facilities.

As with the physical access audit, the objective is to provide a schedule of reasonable adjustments that can be costed and scheduled for action.

Where external consultants are employed, this report would recommend that the same consultant be used for steps 3 and 4 as the two areas overlap.

Step 5 – Train club staff

Implementing the recommendations from steps 3 and 4 is going to require both cooperation and understanding from club staff who may be required to adopt new working practices. If this is to be effective then staff need to understand why changes are required. The Code of Practice recommends that staff are trained on the Part III provisions. It makes sense to implement training programmes before reasonable adjustments are put in place. In addition, staff should be trained to use new equipment such as textphones that might be installed as a reasonable adjustment.

Step 6 – Monitor and review progress

The key person overseeing the programme should ensure that progress is being made and should report to the club if difficulties are encountered. In addition, once reasonable adjustments are in place they should be monitored for effectiveness. The club should review

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Addressing the Requirements of the DDA



(suggested annually) all reasonable adjustments to ensure that they are still the most appropriate solution.

Consultation

Clubs should consult with disabled supporters on all plans that impact on those supporters. Where a club has a Disabled Supporters Club or Association it should consult with that body. Clubs who do not have this facility should consult either with individual disabled supporters or with local associations of disabled people.

Appendix 1

Sources of information and support



Appendix 1

Sources of information and support

The Disability Rights Commission oversees the implementation of the DDA and they should be the first contact for clubs who require additional information. They produce a number of guides that clubs may find instructive and the Disability Discrimination Act and Part III Code of Practice can both be downloaded from their Website at www.drc-org.uk

Other useful publications are:

Guide to Safety at Sports Grounds (1997) – referred to as The Green Guide. The Stationery Office.

Building Regulations Approved Document M. The Stationery Office.

BS8300 "Design of buildings and their approaches to meet the needs of disabled people (2001). British Standards Institute.

"Accessible Stadia" (2003). The Football Stadia Improvement Fund and The Football Licensing Authority.

The "Bobby" Website for checking accessibility can be found at:

<http://bobby.watchfire.com/html/en/index.jsp>

Alternatively, type in Bobby in the Google search engine and the site is listed

For information and advice on any aspect of the DDA:

Disability Rights Commission
222 Grays Inn Road
London
WC1 8HL

Tel: 020 7211 4110
Fax: 08457 778 878
Helpline: 0845 7622 633

Appendix 1

Sources of information and support



Other Useful Contacts:

British Council of Disabled People
Litchurch Plaza
Litchurch Lane
Derby
DE24 8AA
Tel: 01332 295551

British Standards Institute (BSI)
389 Chiswick High Road
London
W4 4AL
Tel: 0208 996 7111

Centre for Accessible Environments (CAE)
60 Gainsford Street
London
SE1 2NY
Tel: 0207 357 8182

Football Foundation/Football Stadia Improvement Fund (FF/FSIF)
25 Soho Square
London
W1D 4FF
Tel: 0207 534 4210

Appendix 1

Sources of information and support



Football Licensing Authority (FLA)
27 Harcourt House
19 Cavendish Square
London
W1G 0PL
Tel: 0207 491 7191

Joint Mobility Unit (JMU)
224 Great Portland Street
London
W1N 6AA
Tel: 0207 391 2002

National Association of Disabled Supporters (NADS)
South DO
Manchester
M20 5BA
Tel: 0845 230 6237

People First
Instrument House
207-215 Kings Cross Road
London
WC1X 9DB
Tel: 020 7713 6400

Appendix 1

Sources of information and support



RADAR
12 City Forum
250 City Road
London
EC1V 8AF
Tel: 020 7250 4119

Royal National Institute for the Blind (RNIB)
105 Judd Street
London
WC1H 9NE
Tel: 0207 388 1266

Royal National Institute for Deaf People (RNID)
19-23 Featherstone Street
London
EC1Y 8SL
Tel: 020 7296 8001

MENCAP
123 Golden Lane
London
EC1Y 0RT
Tel: 0207 454 0454

Royal Institute of British Architects (RIBA)
66 Portland Place
London
W1B 1AD
Tel: 0207 580 5533

Appendix 1

Sources of information and support



Disability Consultants

Access Association
Walsall M.B.C.
Civic Centre
Darwall Street
Walsall
WS1 1TP
Tel: 01922 652010

Adept
31a New Road
Linsdale
Beds
LU7 7LS
Tel: 01525 373964

Churchill and Friend
Weltech Centre Trust
Ridgeway
Welwyn Garden City
Herts
AL7 2AA
Tel: 01707 324466

Appendix 1

Sources of information and support



Disability Matters
The Old Dairy
Tiebridge Farm
North Houghton
Stockbridge
Wiltshire
SO20 6LQ
Tel: 01264 811120

Equal Ability
170 Benton Hill
Wakefield Road
Horbury
West Yorkshire
WF4 5HW
Tel: 01924 270335

National Association of Access Consultants
Nutmeg House
60 Gainsford Street
London
SE1 2NY
Tel: 020 7234 0434

Richard Wood Consultancy Services Ltd
26 Chapel Street
Ripley
Derbyshire
DE5 3DL
Tel: 01773 570834

Appendix 2

Club Policy covering Part III of the DDA



Appendix 2

Club Policy covering Part III (The provision of goods, services and facilities) of the DDA

The Club is committed to ensuring that its disabled supporters and customers have as full access as is reasonably possible to make to all goods, services and facilities provided or offered to the public by the Club.

The Club will operate a concessionary ticketing policy for disabled supporters and will ensure that the scheme does not discriminate between disabled people with differing impairments.

The Club recognises that not all of its facilities are fully accessible to disabled customers and confirms that it is committed to making the necessary reasonable adjustments described by the Disability Discrimination Act and its relevant Codes of Practice to ensure full compliance with the legislation.

The Club also recognises that it is likely to have new duties with effect from 1st October 2004 to remove permanent barriers that make it difficult or impossible for some disabled customers to access Club facilities. The Club will undertake such additional works as are reasonably required within the timescales set out in the Act.

The Club has a training programme to ensure that all Senior Managers and appropriate "front line staff" are trained in the provisions of the Act. Ongoing training will be included in staff induction programmes.

The Club has a grievance procedure in place and guarantees to its disabled supporters and customers that any complaints of discrimination will be dealt with quickly under that procedure.

The Club has advised its staff that any incident of discrimination under the provisions of the Act is a serious matter and will be dealt with under the Club's Disciplinary Procedures.

Appendix 3

The DDA – Part II Provisions



Appendix 3

The DDA – Part II Provisions

This report has not covered the employment provisions of the DDA. However, clubs need to be aware that they may be required to comply with Part II of the Act covering disability discrimination in employment. Currently, clubs employing 15 or more people (full time or part time) come under the provisions of Part II. It is likely that the threshold will be reduced in October 2004, so that anyone employing at least two persons will be covered by the Part II provisions. Note that in calculating the number of employees, playing and coaching staff are included.

For clubs already covered by the Part II of the Act, the following summarises what the DDA says about discrimination against disabled people in employment. Part II of the Act makes it unlawful to discriminate against a disabled person at any stage of employment. This includes:

against disabled job applicants:

- in recruitment and selection arrangements
- in the terms on which employment is offered
- by refusing to offer, or deliberately not offering, the disabled person employment (assuming they are the best candidate)

for a reason related to their impairment

and against existing disabled employees:

- in the terms of employment offered to an employee
- in opportunities for promotion, transfer, training or receiving any other benefit
- by refusing to offer the disabled person any such opportunity
- by dismissing the disabled person or subjecting them to "any other detriment"

for a reason related to their impairment.

Notes

Notes

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Addressing the Requirements of Part III of the Disability Discrimination Act (1995)