WHAT DUTIES ARE PLACED ON CLUBS BY THE DDA?

The Act makes it unlawful for a service provider (such as a football club) to discriminate against a disabled person in two ways:

- treating them less favourably, for a reason related to their disability, than they would treat a non-disabled person, without justification (known as "less favourable treatment"); and
- failing, without justification, to take reasonable steps to prevent it being impossible or unreasonably difficult for a disabled person to use the service ("failing to make a reasonable adjustment").

It is unlawful for a provider of services to discriminate in either of the ways set out above:

- by refusing to provide, or deliberately not providing, to the disabled person any service which it provides, or is prepared to provide, to members of the public;
- in the standard of service which it provides to the disabled person or the manner in which it provides it to them; or
- in the terms on which it provides a service to the disabled person.

"Less favourable treatment" discrimination occurs when a provider treats a disabled person less favourably, for a reason related to their disability, than a non-disabled person. It is important to note that the treatment only has to be for "a reason relating to" the person's disability.

The duty to make reasonable adjustments comprises three main areas:

- making appropriate changes to practices, policies and procedures;
- providing auxiliary aids and services; and
- overcoming physical features of premises by:
  - removing the feature; or
  - altering it; or
  - avoiding it; or
  - providing services by alternative methods.

Whether it is "reasonable" for clubs to make adjustments will be guided by:

- whether taking a particular step 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 step;
- 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;
- the amount of any resources already spent on making adjustments; and
- the availability of financial or other assistance.

These points are not exhaustive, but are likely to be the main questions that should be considered in determining whether a particular step is reasonable, and they will be considered by the courts if clubs seek to justify failing to make reasonable adjustments.

WHAT DUTIES ARE PLACED ON CLUBS BY THE DDA? (continued)

In addition, clubs should be aware that the duty to make reasonable adjustments is an "anticipatory" duty. That means that a club has a duty to anticipate the needs of its disabled customers and make appropriate reasonable adjustments on a continuing basis. This aspect of the duty means that the club should not wait until a disabled customer seeks to use a service before making adjustments: if the disabled customer's needs could reasonably have been foreseen, then steps should be taken in advance.

Because the club thus has a duty to anticipate the "collective" requirements of its disabled customers it will, naturally, seek solutions that have the widest impact. This is good practice and what the law intends. However, the club may still have a duty to an individual who may request (for example) a different "adjustment" to that already made. Whether it would be reasonable to make an additional adjustment would be subject to the tests outlined above.

In considering what "reasonable adjustments" to make, the club cannot necessarily seek the easiest option (unless it is the only option). It must seek to put the disabled person in the same position as non-disabled customers, insofar as it is reasonable to do so. For example, a club shop could be made accessible by installing a portable ramp, but the club decides that it will provide an alternative service by bringing goods to the door of the shop for its disabled customers to buy. Unless there are other legitimate reasons why the ramp could not be installed the club is likely to be discriminating by providing a lesser service, since disabled customers will be denied the opportunity to browse along with non-disabled customers.

In any event, the only grounds on which a club can legally "justify" less favourable treatment, or failing to make a reasonable adjustment, are as follows:

(a) because the treatment is necessary in order not to endanger the health or safety of any person (which may include the disabled person);

(b) where the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment is reasonable in that case;

(c) in a case of refusal to make provision, because the provider of services would otherwise be unable to provide the service to members of the public;

(d) in cases about the terms or standard of provision, because the treatment is necessary in order for the provider of services to be able to provide the service to the disabled person or to other members of the public; or

(e) because the difference in the terms on which the service is provided to the disabled person and those on which it is provided to other members of the public reflects the greater cost to the provider of services in providing the service to the disabled person.

Changes to the law brought about by the Disability Discrimination Act 2005 have not affected the above obligations on service providers. However, this Act has extended the law in two relevant respects:

- First, the law now covers the actions of 'private clubs'. This is dealt with in the paragraphs opposite.

- Second, the law now also covers some aspects of the provision of transport. This may mean that if clubs arrange transport to away games (either alone or as part of a package including tickets and accommodation) they may have to ensure that such transport is accessible to disabled people as part of the duty to make reasonable adjustments.

See further Guidance for clubs on 'Match Day Access'.

Private clubs are defined as clubs with more than 25 members and which regulate membership by a constitution. Generally, this means a membership policy that is based on personal criteria that would require a personal application and (for example) sponsoring or nomination by an existing member, or some form of voting process by existing members.

It may be that clubs will operate private clubs, alongside the services that they offer to the public. Supporters associations may or may not be private clubs, depending on the way in which their membership is decided. It seems most likely that 'VIP' groups offering particular benefits to members would be the type of group that is covered by these new provisions. Of course, each association would need to be assessed against the legal test but in any event there will no longer be any basis for arguing that certain clubs are not covered by the DDA.

Disabled applicants, members, and guests of private clubs are protected under the new provisions. The forms of discrimination that are prohibited are the same as under the general Part 3 provisions, and private clubs are prevented from discriminating:

- By refusing an application for membership, or in the terms on which it is prepared to admit a person to membership.
- By refusing a member or a guest access to club benefits, or in the way it offers that access.
- By varying the terms of membership.
- In the terms on which it invites, or allows members to invite, persons to be guests.
- By depriving someone of their membership.

The duty to make reasonable adjustments requires changes to practices, policies or procedures, alterations to premises and the provision of auxiliary aids and services, as in the general Part 3 provisions.

PROVISION OF OTHER SERVICES: TIE–INS AND SPONSORSHIP

Clubs are now frequently involved in the provision of other services, either themselves or in partnership with others.

Of course, contractors and other companies with whom clubs work will almost certainly have their own duties under the DDA and it is not the clubs' obligation to make them comply with those duties. However, clubs cannot ignore discrimination by companies that they work with, and risk being liable (at least jointly).

When entering into contracts for provision of other services, tie-ins and sponsorship agreements, clubs should accordingly give consideration to the extent to which the other party to the agreement meets their duties under the DDA.

WHAT DUTIES ARE PLACED ON CLUBS BY THE DDA? (continued)

As with the provision of transport to away matches, clubs should seek to determine, in advance, whether there are any disability discrimination issues that could arise under contracted arrangements and to what extent the contractor complies with its duties.

Taking steps to check these issues in advance is potentially a requirement of the "anticipatory" duty to make reasonable adjustments. It is unlikely to be necessary for clubs to reconsider existing contractual arrangements but where contracts are renewed or new agreements entered into, these matters should be given some consideration and a record kept in order that it may be produced if any claim is brought against the club.