

ARCHBISHOPS' COUNCIL

Ministry Division

DEPLOYMENT, REMUNERATION AND CONDITIONS OF SERVICE COMMITTEE

Disability Discrimination Act

Guidance Notes: issued October 2008

Scope

The Disability Discrimination Act came into force in 1995 and its implications are now being felt widely across society including the Church. While not intended to be a comprehensive guide these notes are intended to give an overview of good practice, which employers and dioceses are encouraged to follow to minimise the risk of people at work being treated unfairly or unlawfully. They are written for the current context but are informed by the spirit of transparency and fair treatment that is at the heart of the proposed Terms of Service legislation. As far as possible in the existing legal framework, this guidance is consistent with the proposed arrangements.

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1 Introduction

1.1 The provisions of the Disability Discrimination Act (1995) [DDA] apply to dioceses as service providers but also in their relationship with officeholders and employees.

“ It is unlawful for businesses and organisations to treat disabled people less favourably than other people for reason of their disability. It is also unlawful for any employer to discriminate against a disabled person when choosing someone for a job or considering people for promotion, dismissal or redundancy.” Disability Rights Commission (DRC), www.drc.org.uk. (Now the 'Equality and Human Rights Commission') www.equalityandhumanrights.com.

1.1 The DDA. defines a disabled person as someone who has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.

- (a) ‘Substantial’ means neither minor nor trivial.
- (b) ‘Long-term’ means that the effect of the impairment has lasted or is likely to last for at least 12 months.
- (c) Normal day-to-day activities include things like eating, washing, walking and going shopping. A normal day-to-day activity must affect one of the capacities listed in the Act which include mobility, manual dexterity, speech, hearing, seeing and memory.

1.2 The legal definition of disability covers people with any form of mobility difficulty including wheelchair users, people with sight hearing impairments, people with learning disabilities, people with long-term conditions which may be 'hidden' such as dyslexia, depression, diabetes, sickle cell anaemia, asthma and epilepsy. People with HIV, cancer and multiple sclerosis are deemed to be covered from the point of diagnosis.

1.3 Under Part 2 of the DDA, parochial clergy are included under the term ‘office holders’. For the purpose of this and other relevant legislation e.g. ‘Access to Work’, the employer in the case of clergy would be defined as the person or body that has the power to appoint or dismiss the office holder, usually the bishop.

1.4 It is important that in every area concerning employees and officeholders the two basic tenets of the DDA are adhered to. They are:

- (a) Equal treatment for disabled as for non-disabled people.
- (b) Reasonable adjustment.

1.5 In the case of diocesan employees and officeholders, ‘equal treatment’ should apply in at least the following areas:

- (a) Recruitment - advertising, selection, etc.
- (b) Appointment - 'Access to Work', in service support.
- (c) CME and career development.
- (d) Re-deployment or preferment.
- (e) Access to events and meetings organised at any level in the diocese.

It should be borne in mind that where 'equal treatment' is found to be impossible then better than equal treatment must be considered.

2 Reasonable adjustment

2.1 The most important way in which it is possible to comply with the requirements of the DDA is by making 'reasonable adjustment'.

2.2 What is reasonable?

The term 'reasonable adjustment' was inserted in the Law to give flexibility so there is no one definitive answer. The Code of Practice to the DDA advises factors affecting what is 'reasonable'. These include:

- a) Type of services provided.
- b) The nature of the service provider.
- c) Effect of the disability on the individual disabled person.

Other considerations could include:

- a) What particular steps would be needed to overcome the access difficulty.
- b) The practicability of taking these steps.
- c) The cost to the service provider of these steps.
- d) The amount of disruption involved in taking these steps.
- e) The availability of finance for undertaking the steps involved.

2.3 There is a duty to make reasonable adjustment where a disabled person is actually put at a substantial disadvantage when compared with people who are not disabled;

Arising from,

- (a) A provision, criterion or practice applied by or on behalf of an employer.
- (b) Any physical feature of premises occupied by the employer. (See 'Widening the Eye of the Needle' published by Church House Publishing for the Council for the Care of Churches.)

Examples of 'reasonable adjustment'.

- (i) The car park at the Diocesan Offices is covered with gravel and it is therefore very difficult for wheelchair users to access the building. The diocese decide to designate 2 parking spaces for drivers who are disabled and to make these 'hard standing' with a hard path leading to the building's entrance.

- (ii) One of a clergy team in a parish is a profoundly deaf, sign language user. She is required to attend staff meetings and Deanery meetings. Access to Work pay for a sign language interpreter to support her but in addition the Diocese arranges for all clergy in her deanery to attend a Deaf Awareness training day.

- (iii) A parish has appointed a new incumbent who is a wheelchair user. The Chancel steps make it impossible for him to reach the altar to celebrate Holy Communion. The P.C.C. decide to seek permission to install a moveable nave altar to assist the new incumbent.

3 Recruitment.

3.1 The aim should be to remove all barriers to recruiting people with disabilities, i.e. this means that candidates with disabilities must have the same opportunities as those without disabilities. For example in the job description stipulations like, 'must be able to drive and have a clean driving licence' could be replaced with, 'regular travel between the churches in the benefice and around the diocese is essential'. It should be noted, however, that where an applicant has a pre-existing medical condition which means that there is a significantly increased risk of early retirement, (or even death in service), the Pensions Board may apply certain restrictions on retirement benefits.

3.2 All information and material connected with advertising or applying for a post, whether in printed or electronic form, should be capable of being supplied in other formats on request.

3.3 Every opportunity should be given for applicants to declare a disability so that adjustments can be made to the recruitment process accordingly. All interviewees, whether disabled or non-disabled, should be consulted about any adjustments to the interview situation that may be necessary including, in some circumstances, a change of venue. All staff in contact with the candidate at interview should be aware of how to relate comfortably with them.

3.4 At interview don't make assumptions about what the candidate will or will not be able to do. All interviewees, whether disabled or non-disabled, should be asked how they would carry out their responsibilities. Just describe the tasks and ask how the candidate will do the job.

Examples of 'reasonable adjustment'.

- (i) An applicant for a diocesan post informs the diocese that they have dyslexia and requests information regarding the post in a different format. The diocese supplies the information in bold black type printed on yellow paper to accommodate the applicant's wishes.
- (ii) A candidate who has a mobility impairment is invited for interview. The interviews usually take place in an office up a flight of stairs. There is no lift in the building so the interviews for all the candidates are switched to a ground floor location.

4 Appointment.

4.1 If a disabled person is appointed to a post consideration should be given to their working conditions in terms of premises and equipment. 'Access to Work' funds may be available to offset some of the cost of special equipment or in the case of a profoundly deaf, sign language user, interpreter support. 'Access to Work' funds are applied for by the employee through the local Job Centre Plus. It should be noted that 'Access to Work' funds are only available for paid employees.

4.2 Some 'reasonable adjustments' can be made before the disabled person takes up the post but others will have to be made when they are in post and have had an opportunity to encounter the everyday practicalities involved. Where housing is provided for an employee, e.g. a member of the clergy, then consideration should be given to the accessibility of the accommodation for the clergy person and their family. While the person appointed to the post might not themselves be disabled, a member of their family living in the same accommodation may be disabled.

The employer should initiate regular checks to ensure that any 'reasonable adjustments' are actually working properly. Adjustments may need to be reviewed periodically as requirements may change during the course of employment. It will also be necessary to put into place procedures for existing staff to report a disability if this should develop during their period of employment. Someone who was not disabled when recruited could well become so later.

4.3

Examples of 'reasonable adjustment'.

- (i) A newly appointed incumbent has a visual impairment. There is a short path that leads from the vicarage to the Church. The incumbent

requests that a guide rail be placed alongside the path. The parish agrees.

- (ii) The husband of a recently appointed clergy person has mobility impairment and has difficulty using the stairs at the vicarage. The diocese agrees to install a stair lift to facilitate access to the upper storey.

5 CME and career development.

5.1 Any training offered to clergy in post must be capable of being made accessible to a disabled person. A disabled employee must have equal access as a non-disabled employee to any appraisal scheme in operation in the diocese.

5.2 Disability must not be used as a bar to consideration for appointment to posts of extra responsibility.

Example of 'reasonable adjustment'.

The diocese organises a training day for clergy. One person attending has M.E. They request that the day's programme be revised to allow for shorter teaching sessions and more frequent breaks. The day's schedule is changed accordingly.

6 Events

6.1 The golden rule when organising any diocesan event, e.g. the Diocesan Clergy Conference, is to make sure that 'provision for disabled people' is on the agenda of the first planning meeting.

Example of 'reasonable adjustment'.

The biennial clergy conference is usually held in a location where the main meeting hall is some distance from the sleeping accommodation. This has proved a problem for those clergy who have mobility impairments. The planning committee agree to find a different venue for future conferences.

7 Resources

7.1 The above advice is not intended to be exhaustive. Further clarification or extra guidance can be found by consulting the following:

The Equality and Human Rights Commission (www.equalityandhumanrights.com)

ACAS (www.acas.org.uk)

The Archbishops Council, CMDDP (Committee for Ministry of and among Deaf and Disabled People) Church House, Great Smith Street, London. SW1P 3AZ.

The Council for the Care of Churches, Church House, Great Smith Street, London. SW1P 3AZ.

‘Widening the Eye of the Needle’ published by Church House Publishing