Disability, sight impairment, and the law

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It is important for those dealing with blind and partially sighted people to be aware of the rights conferred by the Disability Discrimination Act

If he had the right pair of glasses then he'd be fine." This may seem like a strange thing to say, but this is a direct quote from an employer who was attempting to deny liability for disability discrimination against a client of mine who was registered blind. There are many employers—as well as, I am afraid that I have to say, ophthalmologists—who are unaware not only of the nature of visual impairment but also of the scope of the Disability Discrimination Act 1995 and the rights that it gives to blind and partially sighted people.

This commentary looks at those rights, at how ophthalmologists may be asked to play their part in a claim taken by a blind or partially sighted person, and at the duties that ophthalmologists themselves are subject to under the act.

The Disability Discrimination Act (DDA) was passed in 1995. Although not without its weaknesses, it was nevertheless a milestone for disabled people, who had campaigned long and hard for civil rights legislation to counter the discrimination that they experience. In order to be covered by the act, you must fall within the definition of disability—you must have a physical or mental impairment which has a substantial and long term adverse effect on your ability to carry out normal day to day activities.¹ This definition is supplemented by regulations and guidance.

Although the definition is potentially very broad (in particular, because in determining what is a "substantial effect," any treatment—except for the wearing of spectacles—is to be disregarded), defendants to claims (usually employers) have persistently denied that a person is disabled. This means that claimants have to go through the process of proving the effect of their impairment upon their lives—for many, quite a traumatic process.² As a result of lobbying by blind and partially sighted people, the government passed the Disability Discrimination (Blind and

Partially Sighted) Regulations 2003 (SI No 712) so that now, as long as you are registered blind or partially sighted or an ophthalmologist certifies you as such, you will automatically be covered by the act.

The act has been amended several times since being passed.³ It now provides protection from discrimination in relation to employment and occupation (including being a councillor); trade organisations and qualifications bodies; education; the provision of goods facilities and services; premises (both residential and commercial); and private clubs. From December 2006 all the functions of public bodies (such as arresting someone) will be covered, as well as the provision and use of certain transport vehicles. Changes will be made to enlarge the scope of the councillor provisions, those relating to housing, private clubs, and qualifications bodies. The act will also impose a duty to promote disability equality on public authorities, including NHS trusts.

At the heart of the act lies the duty to make what are known as "reasonable adjustments." This means that those covered by the act—employers, educators, service providers, etc—must make "reasonable adjustments" to barriers which hinder disabled people in their access to employment, education, service provision, etc.

The Disability Discrimination Act is a powerful piece of legislation that has the capacity to enable blind and partially sighted people to enjoy employment, goods services and premises, and education without discrimination

This reflects the social model of disability—that it is not an individual's impairment that causes them to be unable to take up, for example, employment, but rather the way in which a job or working premises is organised or designed, with little or no thought for difference or impairment. For example,

if a visually impaired person has difficulties in her job because of the fact that information is provided to her in small print that she cannot read, it is not her impairment which has caused her difficulties—it is the fact that the information is not provided in a means that she can access that has caused those difficulties.

EMPLOYMENT

The employment provisions of the DDA⁴ provide that an employer (and others such as those using contract workers, barristers' chambers, etc) must not discriminate against a disabled person in any aspect of the employment process—from advertising the vacancy, the appointment process, through to dismissal or post-employment actions (such as the provision of a reference).

Discrimination can take one of three forms:

- direct, where someone is treated less favourably on grounds of disability—usually prejudice
- disability related, where someone is treated less favourably for a reason relating to their disability, such as time taken off work for a disability related reason, or
- a failure to make reasonable adjustments.

It is only disability related discrimination that can be justified under the Act.

The duty to make adjustments applies where a provision criterion or practice applied by or on behalf of an employer, or any physical feature of premises occupied by an employer, places a disabled person at a substantial disadvantage compared with people who are not disabled. In these circumstances, the employer must take reasonable steps to prevent the provision criterion or practice, or physical feature, from having this effect. Examples of reasonable adjustments given in the act, which may be relevant in relation to visual impairment include: allocating some of the disabled person's duties to another person; transferring him to fill an existing vacancy; altering hours of work or training; acquiring or modifying equipment; providing a reader or interpreter; modifying procedures for testing or assessment.

In practice, this means that if someone develops a visual impairment, or their vision deteriorates, an employer can no longer dismiss them because of this—they will need to make an assessment of what adjustments could be made to enable that person to continue in their job. It is a very powerful duty, giving people the right to bring an employer to an employment tribunal,

and to claim financial compensation if the duty is not complied with. Financial assistance is available from the Access to Work scheme (a government scheme) to pay for up to 100% of any costs incurred in making any adjustments, depending on the circumstances.

The House of Lords has said about the act (when considering this duty)⁵:

"The 1995 Act, however, does not regard the differences between disabled people and others as irrelevant. It does not expect each to be treated in the same way. It expects reasonable adjustments to be made to cater for the special needs of disabled people. It necessarily entails an element of more favourable treatment."

A recent case illustrates the power of the duty. Mrs Meikle was a visually impaired schoolteacher whose sight deteriorated.⁶ She asked for a number of relatively small adjustments to be made by the school at which she worked, such as timetables in large print. This was not done, however, and she found it increasingly difficult to do her work. She went off work on sick leave—having become very stressed by her situation. Her sick leave expired, her income reduced, and adjustments had still not been made. Following a letter to the school asking them to make these adjustments or else she would be forced to resign, no changes were made and she resigned. She brought a claim of disability discrimination relating not only to her constructive dismissal (that is, she had been forced to resign) but also in relation to the fact that she was not getting her full pay, because her full pay sick leave had expired. The Court of Appeal not only upheld her claim for dismissal, but also said that the school had discriminated against her in relation to the sick pay. It could not justify this disability related treatment because it was in breach of its duty to make adjustments—if it had made the adjustments, Mrs Meikle would not have been off sick, and so would not have had a reduction in her income. A compensation figure was reached in April 2006 of £196 000.

There are many other examples of the legislation assisting visually impaired people in employment situations—not just following dismissal, but also in helping people to retain or apply for jobs, such as:

- job application forms being available in large print
- provision of access technology to enable jobs with computer use to be accessible
- provision of a reader to assist with reading correspondence, filing, etc

- provision of taxi fares for travel involved in a job that would otherwise require a driving licence

It is also worth noting that following the adoption of the Employment Framework directive, all European Union member states must have legislation in place which prohibits discrimination on the basis of disability, and which provides for reasonable accommodation to be made to enable disabled people to access employment and occupation.

GOODS FACILITIES AND SERVICES

The act also imposes duties on those providing services to the public (service providers). The scope of "service provider" is very broad—it covers anyone providing goods facilities or services, whether free of charge or for payment, from an ophthalmologist, to a church to a supermarket or a library. The act prohibits a service provider discriminating against a disabled person in any aspect of service provision, from refusing service to providing service on worse terms or in a worse manner. It also prohibits a service provider failing to comply with the duty to make reasonable adjustments. The duty in relation to service provision is slightly different from the employment duty in that it is "anticipatory" in nature. This means that service providers have to think in advance about what changes may be needed to their services to facilitate disabled users, rather than just waiting until a disabled customer approaches them. Many service providers have already made changes to their services to accommodate disabled people—such as putting in ramps or providing information in large print, or in braille.

The duty to make adjustments falls into three broad areas:

- Changes to practices policies or procedures—such as waiving a "no dogs" or "no animals" policy so that people with guide dogs or assistance dogs can enter the premises
- The provision of auxiliary aids or services—such as information on tape or large print, or assistance with shopping in a supermarket
- Addressing physical barriers caused by, for example, steps or lack of colour contrasts by providing a ramp, or painting walls different colours.

The Court of Appeal⁷ has said about this part of the act:

"The policy of the Act, as I would accept, is ...to provide access to a service as close as it is reasonably

possible to get to the standard normally offered to the public at large'."

Although relatively few cases have been brought to the courts regarding this part of the act, it has nevertheless been used to ensure that blind and partially sighted people have:

- letters and bills from utility companies in an accessible format
- assistance with filling in forms for store cards
- access to restaurants with their guide dogs
- access to nightclubs.

EDUCATION

There are similar provisions covering education to those relating to goods and services—in particular, there is an anticipatory duty to make reasonable adjustments to enable disabled students to have access to education and associated services. The duty is more limited in relation to pre-16 education than in post-16 education as there are separate special educational needs provisions covering those of school age. These provisions have been used to ensure that a visually impaired student has access to course materials, which are usually printed in standard print.

There are also anti-discrimination provisions relating to housing, which will be broadened to include a reasonable adjustment duty from December 2006.

CONCLUSIONS

The Disability Discrimination Act is a powerful piece of legislation that has the capacity to enable blind and partially sighted people to enjoy employment, goods services and premises, and education without discrimination and with the provision of reasonable adjustments. It is as important for those dealing with blind and partially sighted people on a daily basis—as well as disabled people themselves—to be aware of the rights conferred by the act.

- If you are informing someone that they are registerable as blind or partially sighted, and they express concern about their job, access to services, etc, let them know about the Disability Discrimination Act and ensure that they know where to go for advice
- If you are asked for advice about whether or not someone is capable of working, remember that reasonable adjustments may make a big difference to someone's ability to carry out work
- Ensure that your clinic is providing information about appointments, etc, in an accessible format, and that

visually impaired people can access its services without hindrance—or you and your employer may be in breach of the act

- Know where to go for information—the Disability Rights Commission has a helpline and a website (www.drc-gb.org); and the Royal National Institute of the Blind also provides advice and information on the DDA (www.rnib.org.uk).

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Corneal transplant

The first successful full-thickness corneal transplant: a commentary on Eduard Zirm's landmark paper of 1906

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The first successful full-thickness corneal transplant was performed in 1905

Despite attempts since the early 1800s, success in corneal transplantation remained elusive at the beginning of the 20th century.¹ Then, seemingly against the odds, one of the bilateral corneal transplants performed by Eduard Zirm in December 1905 on a 45-year-old farm labourer remained clear.² The patient had lime burns and would be considered a poor candidate for corneal transplantation today. The graft continued to function sufficiently well to allow the patient to return to lighter agricultural duties at home.

This remarkable outcome refuted Salzer's view, quoted by Zirm, that full-thickness grafts would never remain clear because of graft absorption and loss of histological identity. Although Fuchs had shown that graft integrity was indeed retained, he nonetheless believed that the seemingly inevitable clouding of grafts was a consequence of the healing process. Such opinions are entirely understandable, given the failure of any previous full-thickness graft to remain transparent for more than 2–3 weeks. Zirm's own comments and speculations on the reasons for his success provide a revealing insight into the thinking of the time.

CASE REPORT, SUMMARISED FROM ZIRM'S 1906 PAPER

Some 15 months after the lime burns, the patient's corneas were white-grey in

colour and opaque with a flattened corneal curvature, but intraocular pressure was reported to be normal. Both eyes had light perception and the right eye could detect hand movements. The donor was an 11-year-old boy with an iron intraocular foreign body after a penetrating eye injury. Attempts to remove this foreign body ended in collapse of the eye and, with the father's permission, the eye was enucleated. Zirm kept the eye in warm physiological saline solution and began the transplant operation without delay.

After induction of deep anaesthesia, a 5-mm disc of opaque central tissue was cut from the patient's right cornea using a von Hippel trephine. A trephine of the same diameter had already been used to cut a disc of tissue from the peripheral cornea of the donor eye. The graft was positioned and a pedicle conjunctival flap sutured over it. For the left eye, a disc of tissue was cut from the centre of the donor cornea. The graft was kept warm and moist by placing it between two pieces of saline-moistened gauze and holding it over a steaming container of hot, sterilised water. A disc of tissue of the same size was removed from the centre of the patient's cornea and the graft inserted directly using just the gauze to manipulate the graft. Zirm noted that it fitted perfectly, a point he later emphasised as being one of the most important reasons why the graft

was successful. The graft was held in place by two overlay sutures. After 1 week both grafts were clear, but in the next 2 weeks the right eye became painful, and the transplanted cornea and surrounding tissue were eventually excised. The graft in the left eye remained clear.

After 5 months, visual acuity was recorded as 3/50 and J16 unaided, improving to 3/20 with +5 DS. After 6 weeks, Zirm reported that the graft was completely transparent, allowing him to observe adherence of the iris at the wound interface. Several superficial blood vessels that had spread across the cornea were seen, but these stopped at the graft margin. The lens and vitreous were clear and the fundus normal by ophthalmoscopy.

FACTORS TO WHICH ZIRM ATTRIBUTED HIS SUCCESS

The quality of the donor tissue

The cornea had come from a young boy and the tissue was in good condition nutritionally. To emphasise this point, Zirm mentions a later graft in 1906 that, he believed, had failed owing to the use of tissue from an atrophied eye. He also stresses that corneas from other animal species should not be used. (Despite Bigger's report in 1837 of a successful corneal allograft performed 2 years earlier on his pet gazelle,³ most of the attempts at human corneal transplantation that followed were in fact xenografts because it was thought important to use eye tissue from a living donor.)

The conduct of the operation

In addition to meticulous asepsis and general anaesthesia, Zirm mentions the following as important to the successful outcome. The donor eye was kept in warm physiological saline at near body temperature. To achieve complete contact around the graft–host interface and to avoid early loss of transparency, Zirm considered it essential for grafts to be cut only with a trephine, using no other instruments. Once the graft was cut, it was not treated with antiseptics but kept warm and moist until transplantation.