

WHO IS A DISABLED PERSON UNDER THE DDA?

Some clubs have expressed concerns that they are not sure who is covered by the Disability Discrimination Act (DDA). This section summarises the legal definition used to determine whether someone is 'disabled', and thus protected under the Act.

For the purposes of the DDA, 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.

This definition has remained unchanged since the Act was originally passed in 1995. However, some details of the definition have been amended as from December 2005. Guidance on the meaning of disability has been issued by the Government.

Accordingly, there remain four parts to the definition:

"A PERSON WITH A PHYSICAL OR MENTAL IMPAIRMENT"

This includes those with mobility impairments, sensory impairments (hearing, eyesight), learning difficulties and mental impairment. It is no longer necessary that a mental impairment be "clinically well-recognised".

Other people covered by the Act include:

- People with severe disfigurements, even where these do not directly affect any day-to-day activity.
- People with cancer, multiple sclerosis or HIV infection are included from the moment of diagnosis (i.e. even where, currently, there is no affect on day-to-day activities).

- People with other progressive conditions (e.g. muscular dystrophy, rheumatoid arthritis) are included from the moment that the condition has some effect on their ability to carry out day-to-day activities, provided that at some point in the future it will have a substantial effect.
- People whose physical or mental impairment is substantially corrected or controlled by the use of prosthesis (such as artificial limbs) or medication (except if an impairment is controlled or corrected by spectacles, eyeglasses or contact lenses, in which case it is only if the residual effect is sufficiently adverse that the person would be covered).
- Children under the age of six who would be covered by the DDA if they were an adult.

People with the conditions below are expressly not covered by the DDA:

- Those whose impairment consists only of addiction to nicotine, alcohol or any other substance (unless the addiction resulted from medically prescribed drugs or treatment).
- Those with conditions giving them a tendency to set fires (pyromaniacs), a tendency to steal (kleptomaniacs), a tendency to physical or sexual abuse, exhibitionism or voyeurism.
- Those with seasonal allergic rhinitis (hay fever).
- Those with a severe disfigurement consisting of an unremoved tattoo or a body piercing.

WHO IS A DISABLED PERSON UNDER THE DDA? (continued)

THE IMPAIRMENT MUST HAVE A “SUBSTANTIAL ADVERSE EFFECT”

Substantial, in this context, means only “more than minor or trivial.” As stated above, if an impairment is corrected by use of a prosthesis (other than spectacles) or by medication, that correction must be discounted before determining whether the effect is “substantial”.

THE EFFECT MUST BE “LONG TERM”

This means that:

- It must have lasted, or be expected to last, at least 12 months;
- 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.

THE IMPAIRMENT 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;
- 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.

In most cases, it will be clear whether or not a person meets the above definition and it should not therefore be necessary to make significant checks on eligibility. However, there may be cases 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 that event, if the club is offering a concession or if the person is seeking a reasonable adjustment (such as a ticket for a PA) the club is entitled to seek evidence from the person.

Typical evidence that a club could seek would be one of the following:

- Entitlement to the medium or higher rate care component of the Disability Living Allowance (DLA).
- Entitlement to the mobility component of the DLA.
- Holder of a Blue Badge (with the person named as the disabled person).
- Letter of confirmation from the Local Authority Social Services Department that the person is in receipt of support services.
- Letter from the person’s GP confirming that they are a disabled person with a recognised impairment that requires extra help.

In the case of DLA, the award may be for life or for a fixed period. Accordingly, it would be reasonable for a club to check periodically (for example, annually), whether a disabled person remains eligible, although where an award is made for life, it would be helpful if the club’s systems could record this so as to avoid the need for periodic checks of that person’s eligibility.