

# ACCESSIBILITY: THE NEW LEGISLATION

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## 1. INTRODUCTION

The concept and terminology of ‘accessibility’ have in recent years become very fashionable. This is partly a reflection of a gradually increasing awareness of the desires, needs and aspirations of all sorts of groups within society that were in the past insufficiently taken into account or else completely ignored. So with women, children, the elderly, those of particular races or nationalities, those of different religions (or denominations) or none, those of particular lifestyles or sexual orientations—each has been gradually recognised, and brought into the mainstream of society. Thus, for example, we now take it for granted that equal facilities should generally be afforded for men and women—but it is not so long since this was far from universal.

It is also noteworthy that in most if not all of these cases, the aim has been not to make available separate arrangements so that the new group can have some sort of access to the facilities enjoyed by others, but rather to open up those facilities so that all have (so far as possible) identical access. As will be highlighted below, that is an important principle to bear in mind in trying to accommodate the disabled.

The ‘disabled’ are thus simply the most recent group to be given special attention. The immediate focus of attention (both in this paper and more widely) is the Disability Discrimination Act 1995; and the concept of disability is given a specific meaning by that Act. The detailed provisions of that Act—explored in greater depth below—therefore apply only to those who are within its scope. But a ‘disabled’ person is in practice merely someone who has different physical, mental or other abilities to the ‘average’ person, and it is thus entirely reasonable to expect that—other things being equal—all facilities offered by churches should be available on an equal basis to everyone, regardless of their abilities. And where a person has a less than average ability (for example, a missing limb), that may be because of his or her inherited genetic make-up, or due to a disease of some kind, or because of an ‘accident’ that was someone else’s fault, or because of the person’s own mistake in the past; whichever, the result is the same.

This approach reflects the Christian understanding—God is concerned with all, regardless of (for example) their age, gender, race, physical ability, intelligence, or past conduct, but he is also concerned with each person individually, and his plan is for each person to achieve his or her (not someone

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else's) maximum potential. Thus, whilst the whole life and ministry of Jesus—not just his teaching—demonstrated his concern for the sick and the disadvantaged, he did not heal all; and the Church subsequently has been able to achieve physical healing for a few, but by no means all. Further, well-known texts such as 'God so loved the world that he sent his only Son that *whoever* believes in Him should have eternal life'<sup>2</sup> make it clear that there can be no question of differential access.<sup>3</sup> And the saying of Jesus that 'I am come that you might have life in all its fullness'<sup>4</sup> makes it clear that he aimed to overcome as far as possible the physical limitations of individuals—but by enabling each person to reach his or her full potential, without necessarily being changed so as to conform to the statistically normal.

Hence the recent observation by the Archdeacon of Worcester that this is a time when state legislation, in the form of the 1995 Act, is at last meeting with the Christian theology of access to God for all.<sup>5</sup>

#### *The Disability Discrimination Act 1995*

However, whilst such reflections are of continuing interest, and can no doubt be explored more coherently by others, the particular focus of this paper is the forthcoming implementation (in October 2004) of further provisions of the 1995 Act, in particular as it relates to the adaptation of buildings and their contents.

Those responsible for churches will of course have to comply with all the requirements of the Act in relation to their buildings. October 2004 is not far away, and it will therefore be sensible for any new building works or re-ordering schemes from now on to be devised and implemented so as to lead to full compliance. Further, it is probable that there will be in many and should be in all cases a desire to do more than merely comply with the strict terms of the Act, but also to go the extra mile and comply with the spirit of the new legislation—for the reasons already touched upon. This is of course right in principle, but such an approach is also likely to lead to considerable expense that may be ill-afforded, and so it is wise to consider first what is and is likely to be actually required by law, before then going on to consider whether further changes are merely desirable as opposed to mandatory. That will then enable proposed works to be prioritised.

The Act deals with the problem of discrimination against disabled people in two areas. Part II deals with employment; Part III deals with the provision of goods, facilities and services.<sup>6</sup> This paper deals with the second of these. It

<sup>2</sup> John 3 : 16. See also, for example, Matt 28 : 19, and Acts 11 : 18.

<sup>3</sup> Leaving aside the theologically tricky question of how those of very limited mental incapacity can 'believe in' anything.

<sup>4</sup> John 10 : 10.

<sup>5</sup> *Re Holy Cross, Pershore* [2001] 3 WLR 1521, (Worcester Cons Ct.).

<sup>6</sup> For detailed guidance on the Act as a whole, see *Disability Discrimination: Law and Practice* (Brian J Doyle, 4th edn, Jordan, February 2003); and *Disability Discrimination: The Law and Practice* (Declan O'Dempsey and Andrew Short, 1st edn, FT Law & Tax, Sweet & Maxwell, 1996), now somewhat out of date.

should be noted at this stage that an excellent *Code of Practice* on the operation of Part III of the Act<sup>7</sup> has been produced by the Disability Rights Commission (DRC), the body set up to supervise the working of the Act.<sup>8</sup>

It should be noted that this paper does not deal specifically with the provision of new churches,<sup>9</sup> although once a new church building has been opened the church body using it will of course be subject to the requirements of the 1995 Act.

## 2. BASIC CONCEPTS

### 'Service providers'

It is important at the outset to take on board several concepts that are fundamental to the scheme of the 1995 Act. The first is that of a 'provider of services'. This is the subject of section 19(2), (3) of the 1995 Act,<sup>10</sup> which makes it quite clear that a church (that is, the incumbent, churchwardens

<sup>7</sup> *Disability Discrimination Act 1995: Code of Practice: Goods, Facilities, Service and Premises* (produced by the Disability Rights Commission, under section 53A(1) of the 1995 Act; brought into force on 27 May 2002 by SI 2002/720—available from TSO, £13.95)—referred to in the remainder of this paper simply as the *Code of Practice*.

<sup>8</sup> Under the Disability Rights Commission Act 1999 (contact details: Disability Rights Commission, 7th Floor, 222 Gray's Inn Road, London, WC1X 8HL; Tel 020-7289-6111; web-site [www.drc.gov.org](http://www.drc.gov.org)).

<sup>9</sup> The provision of new churches has been for many years and still is governed by the Chronically Sick and Disabled Persons Act 1970. Section 4 of that Act (as amended by section 6 of the Disabled Persons Act 1981) requires as follows:

Any person undertaking the provision of any building or premises to which the public are admitted, whether on payment or otherwise, shall, in the means of access both to and within the building or premises, and in the parking facilities and sanitary conveniences to be available (if any), make appropriate provision for the needs of members of the public visiting the building or premises who are disabled.

In more detail, the erection of new buildings, and extensions to existing ones, is the subject of Part M of the Building Regulations 1991 (Access and Facilities for Disabled People). An Approved Document was issued in 1992, and revised in 1999; a further revised edition was issued in draft in August 2002. These set out a number of useful guidelines for such detailed matters as the dimensions of toilets for those in wheelchairs, and the maximum lengths of ramps—which are equally applicable when planning alterations to existing buildings.

<sup>10</sup> (2) For the purposes of this section and sections 20 and 21—

(a) the provision of services includes the provision of any goods or facilities;

(b) a person is "a provider of services" if he is concerned with the provision, in the United Kingdom, of services to the public or to a section of the public; and

(c) it is irrelevant whether a service is provided on payment or without payment.

(3) The following are examples of services to which this section and sections 20 and 21 apply—

(a) access to and use of any place which members of the public are permitted to enter;

...

(f) facilities for entertainment, recreation or refreshment;

...

(g) the services of any profession or trade, or any local or other public authority.

and PCC) is a ‘provider of services’ for the purposes of the Act—the word ‘services’ being used here, of course, in its general sense, and not referring only to the more limited concept of public worship. Thus the *Code of Practice* cites, as one of its examples of groups to whom the Act applies, ‘a local religious group holding prayer meetings’.<sup>11</sup> And it was simply assumed in both *Re Holy Cross, Pershore*<sup>12</sup> and *Re Abbey Church of SS Peter and Paul, Dorchester*<sup>13</sup> that the provisions of section 21 did apply to churches.

It should be emphasised that Part III of the Act is concerned with the provision of services generally, not specifically with (for example) buildings or procedures. Further, the whole Act and all the guidance focuses on the duties of service providers, and does not address some of the consequential problems that arise for others—such as planning authorities (and chancellors!).<sup>14</sup> Thus, the key question is not, for example, whether wheelchair users can get through a particular door into a church building, but rather whether everyone (including wheelchair users, the blind and those with reduced hearing) can benefit from the various services offered by the church as a whole.

#### ‘Disabled people’

The second key concept is that of a ‘disabled person’. This is defined in Part I of and Schedule 1 to the 1995 Act. Paragraph 4 of that Schedule makes it clear that ‘disability’ is broad and all-embracing, in that it is any physical or mental impairment which has a substantial and long-term effect on the ability of the person concerned to carry out normal day-to-day activities, with reference to mobility, manual dexterity, physical co-ordination, continence, ability to lift, carry or otherwise move everyday objects, speech, hearing or eyesight, memory or ability to concentrate, learn or understand, or perception of the risk of physical danger.

It therefore extends not just to people in wheelchairs, the totally blind and the deaf, but also to those with arthritis, partial sight, progressive Alzheimer’s Disease, and many, many others. See also the Appendix to the *Code of Practice*.

The number of such people is not certain. The DRC estimates it at 8½ million in the UK, or around 15% of the population. *Open to All*, a publication produced by the Diocese of Lichfield, estimates it at between 10 and 15%. Others put the figure lower.

However, any changes specifically for the benefit of those who are given rights by the Act will also benefit the elderly, the heavily pregnant, those who

<sup>11</sup> *Code of Practice*, paragraph 5.49.

<sup>12</sup> *Re Holy Cross, Pershore* [2002] Fam 1, [2001] 3 WLR 1521, (2000) 6 Ecc LJ 86, 19 CCC No 35, Worcester Cons Ct.

<sup>13</sup> *Re Dorchester Abbey* (2002) 7 Ecc LJ 105, Oxford Cons Ct, 7 October 2002, unreported.

<sup>14</sup> See note 30 below.

are excessively large or small, infants and those in charge of them, the sick, and the temporarily injured—which sooner or later includes everyone.

*'Discrimination'*

Thirdly, section 19(1) of the 1995 Act<sup>15</sup> has the effect that it is unlawful for a church to 'discriminate' against a disabled person. The term 'discrimination' is then defined in section 20,<sup>16</sup> so as to encompass a situation in which there is an objectively discernible act of discrimination, but without a subjective belief (at the time) that the act is justified. It should be noted that the discrimination can take two forms—

- generally discriminatory treatment in the course of providing services; and
- failure to comply with the duty under section 21 to make adjustments.

The first has applied since 2 December 1996. Again, note the emphasis on services, and not on buildings.

### 3. DUTIES UNDER THE 1995 ACT

*From October 1999: altering practices, policies and procedures, and providing auxiliary aids*

Section 21 of the Disability Discrimination Act 1995 imposes positive duties, and is being brought into force in two tranches. The easier part (sub-

<sup>15</sup> (1) It is unlawful for a provider of services to discriminate against a disabled person—

- (a) in refusing to provide, or deliberately not providing, to the disabled person, any service which he provides, or is prepared to provide, to members of the public;
- (b) in failing to comply with any duty imposed on him by section 21 in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person to make use of any such service;
- (c) in the standard of service which he provides to the disabled person or the manner in which he provides it to him; or
- (d) in the terms on which he provides it to him.

<sup>16</sup> (1) For the purposes of section 19, a provider of services discriminates against a disabled person if—

- (a) for a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply; and
- (b) he cannot show that the treatment in question is justified.

(2) For the purposes of section 19, a provider of services also discriminates against a disabled person if—

- (a) he fails to comply with a section 21 duty imposed on him in relation to the disabled person; and
- (b) he cannot show that his failure to comply with that duty is justified.

sections (1), (2)(d) and (4))<sup>17</sup> came into force on 1 October 1999. This essentially requires the making of ‘reasonable’ adjustments to procedures and practices, and is unlikely to be too expensive or difficult in practice.

As to what is a ‘physical feature’, this is the subject of the Disability Discrimination (Services and Premises) Regulations 1999,<sup>18</sup> which provide (in regulation 3)<sup>19</sup> that more or less anything is capable of being a feature attracting the duty under the Act.

A simple example of complying with this first stage duty, in relation to physical features, would be where a church that holds a prayer meeting in a room on the first floor chooses to hold it instead in a ground floor room. The change is simply a reallocation of rooms, and costs nothing. Further examples are considered below.

<sup>17</sup> (1) Where a provider of services has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which he provides, or is prepared to provide, to other members of the public, it is his duty to take such steps as it is reasonable, in all the circumstances of the case, for him to take in order to ensure to change that practice, policy or procedure so that it no longer has that effect.

(2) Where a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to—

(d) provide a reasonable alternative method of making the service in question available to disabled persons.

...

(4) Where an auxiliary aid or service (for example, the provision of information on audio tape or of a sign language interpreter) would—

(a) enable disabled persons to make use of a service which a provider of services provides, or is prepared to provide, to members of the public, or

(b) facilitate the use by disabled persons of such a service,

it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to provide that auxiliary aid or service.

<sup>18</sup> 1999 SI No 1191.

<sup>19</sup> For the purposes of section 21(2) of the Act, the following are to be treated as physical features (whether permanent or temporary)—

(a) any feature arising from the design or construction of a building on the premises occupied by the provider of services;

(b) any feature on the premises occupied by the provider of services or any approach to, exit from, or access to such a building;

(c) any fixtures, fittings, furnishings, furniture, equipment or materials in or on the premises occupied by the provider of services;

(d) any fixtures, fittings, furnishings, furniture, equipment or materials:

(i) brought on to premises other than those occupied by the provider of services, by or on behalf of the provider of services;

(ii) in the course of providing services to the public or to a section of the public;

(iii) for the purpose of providing such services;

(e) any other physical element or quality of land comprised in the premises occupied by the provider of services.

*From October 2004: overcoming barriers created by physical features*

The second, more taxing, provision in section 21 of the Act, the remainder of subsection (2), comes into force on 1 October 2004. This provides that where a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of a service, it is the duty of the provider of that service 'to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to—

- (a) remove that feature;
- (b) alter it so that it no longer has that effect;
- (c) provide a reasonable means of avoiding the feature.'

It will be readily appreciated that this is a much more demanding (and potentially expensive) requirement. However, it will also be noted that the duty is still qualified by the requirement to take only such steps as are 'reasonable, in all the circumstances of the case'. A simple example of complying with this second stage duty is given in the *Code* itself:

A local religious group holds prayer meetings in a building entered by steps. The room in which the prayer meetings are held has a narrow entrance door. To ensure that its prayer meetings are accessible to disabled people, the religious group installs a permanent ramp at the entrance to the building. It also widens the door to the room. These are likely to be reasonable steps for the religious group to take.<sup>20</sup>

Unlike complying with the first-stage duty, installing a permanent ramp and widening a door will involve expenditure—and may be difficult to achieve satisfactorily if the building is of historic interest. Again, further examples are given below.

Note that it will not be necessary to spend more than the prescribed maximum amount (see section 21(7)); although it appears that no amount has in fact yet been prescribed.

*Application to churches*

The key provision in the present context is the duty under section 19(1)(b) for the provider of a service to comply with any duty imposed by section 21 (which includes adapting premises) in circumstances in which the effect of that failure is to make it impossible or *unreasonably* difficult for a disabled person to make use of any such service. That is, it is the availability of the service in question that is the focus of the requirements under the Act, not the physical features of the building as such.

<sup>20</sup> *Code of Practice*, para 5.49.

This was considered in *Re Holy Cross, Pershore*,<sup>21</sup> a case relating to the replacement of pews with chairs, in which there was a disagreement as to, amongst other things, whether the proposed changes were necessary to facilitate the use of the church by the disabled. This led to the following conclusion:

It thus seems to me that a church will have to make reasonable provision to allow wheelchair users (and those with pushchairs) a degree of choice as to where they sit—for regular worship and at meetings, children's and young people's groups, and at other activities. But not all the seats in a church will have to be either removed or moveable to allow space for a wheelchair or pushchair. Of course, this means that those in wheelchairs or with pushchairs will have less choice than others; but the requirement of the Act is, in my opinion, only 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. Or, to take another instance, if part of a church (such as the nave), where the majority of services are held, admits guide dogs, that is no excuse for excluding guide dogs from parts of the church where smaller services and group meetings and other activities take place. In such a case, it will not be good enough for a parish to suggest that, because a blind person is able to use 80 per cent of the church, the service is reasonably accessible; it must consider a reasonable adjustment so that the disabled person can use the church to the full.

I therefore conclude that there is a duty on churches to provide, if at all possible without unreasonable expense, full access to and from the church (by, for example, eliminating steps and doors that are difficult to open, or making it possible to avoid them without a major detour) and to and from all the principal parts of it (including the communion rail in the main worship area, all or at least most subsidiary areas such as side chapels, meeting rooms, toilets, and areas where refreshments are served) and as much as possible of the churchyard—since without such access the services offered by the church are not available to the disabled. There is not, however, an obligation to enable a disabled person to use every seat or pew in the church—provided that there is a degree of choice as to where he or she may sit. On the other hand, it will not usually be acceptable for a disabled person to be forced to sit right at the back or the front.

What this means in any particular case must be a matter for judgement, to be exercised sensitively in each case—unless and until more detailed guidance is issued on the implementation of these provisions of the Act (possibly in the form of a further code of practice issued by the Secretary of State under section 51(2)).

### *Guidance*

Happily, as already noted, such a *Code of Practice* has now been issued—albeit not by the Secretary of State but by the Disability Rights Commis-

<sup>21</sup> *Re Holy Cross, Pershore* [2002] Fam 1, [2001] 3 WLR 1521, (2000) 6 Ecc LJ 86, 19 CCC No 35, Worcester Cons Ct.

sion, under section 53A(1).<sup>22</sup> This is essential reading for anyone interested in pursuing this matter further. It sets out the principles clearly, and provides numerous examples. Almost none of these relate directly to churches, but very many have immediate parallels.

Other guidance is contained in the numerous publications now available. Some of these have been written with the needs of churches specifically in mind: in particular, a publication from the Council for the Care of Churches entitled *Widening the Eye of a Needle*<sup>23</sup> provides a series of very useful check-lists. A number of dioceses have produced useful handbooks.<sup>24</sup> And an organisation called ‘Through the Roof’ exists specifically to provide help in relation to these issues.<sup>25</sup>

In addition, there is much useful guidance that is aimed at a wider audience, but which is just as useful for churches.<sup>26</sup> And there are a very large number of specialist organisations dealing with particular forms of disability.<sup>27</sup>

So there is no excuse for churches not to take action—and sooner rather than later.

#### 4. PRACTICAL APPLICATION

##### *Carrying out an access audit*

The first step for a church (or any other organisation) seeking to comply with the requirements of the Act is to stop and think, carefully,

<sup>22</sup> See note 7 above.

<sup>23</sup> *Widening the Eye of a Needle: Access to Church Buildings for People with Disabilities*—John Penton, 2nd edn, 2002, Church House Publishing (£10.95). See also *Disability Discrimination Act 1995: Taking Account of its Implications for the Fabric of Churches and Cathedrals: Advisory Note by the Council for the Care of Churches (CCC) and the Cathedrals Fabric Commission*—draft issued April 2001; final version expected early 2003.

<sup>24</sup> See e.g. *Open to All: A commitment to a Church accessible to every one* (Rev'd Andrew Bryant and Dr Gillian Reynolds, Diocese of Lichfield, 1999; reissued by Diocese of Guildford, 2001); *Open for All* (Diocese of Carlisle, Board for Social Responsibility, 2002); and *Everyone—Together! A Parish resource pack on disability* (Diocese of Liverpool, Board for Social Responsibility). The author is grateful to James Behrens for supplying copies of these. No doubt there are others.

<sup>25</sup> Through the Roof, Global House, Ashley Avenue, Epsom, Surrey, KT18 5AD (tel. 01732-749955). They produce in particular various specialist materials, as well as the comprehensive *Churches for All* pack. See their web-site: ([www.throughtheroof.org](http://www.throughtheroof.org))

<sup>26</sup> See e.g. *Designing for Accessibility: an Introductory Guide* (Tessa Palfryman, CAE, 2000); *Access to the Historic Environment: Meeting the Needs of Disabled People* (Lisa Foster, Donhead Publishing, 1997); *Buildings for All to Use: Good Practice Guidance for Improving Existing Public Buildings for People with Disabilities* (Sylvester Bone, Construction Industry Research and Information Association (CIRIA), 1996); and *Easy Access to Historic Properties* (English Heritage, 1995).

<sup>27</sup> The DRC web-site ([www.drc.gov.uk](http://www.drc.gov.uk)) provides a useful set of links to other organisations.

- what services—in the general sense—are being or might in the future be provided, and
- what barriers there might be to everyone being able to take advantage of those services.

Then it is necessary to draw up, in outline, a complete shopping list of all the changes that could be made—either as to the way in which each service is provided, or in relation to the building in which it is provided—to enable those barriers to be removed or avoided. This is known as an ‘access audit’.

The next step is to cost those changes, and to draw up a list of priorities—so that the available money and time is used to the greatest effect. And then, of course, the necessary changes (either alterations to procedure, or physical works) must be carried out as a systematic programme—those that cost significant sums of money need not necessarily be carried out all at once, but they should not be delayed too long. It is after all only necessary to carry out ‘reasonable’ steps, not ‘all possible steps’. However the exercise is carried out, it is important at each stage to make a written record of what is being done (and what options are being considered but rejected), so as to substantiate a possible future defence to a claim under the Act. *The Code of Practice* sensibly advises:

Service providers are more likely to be able to comply with their duty to make adjustments in relation to physical features if they arrange for an access audit of their premises to be conducted, and draw up an access plan or strategy. Acting on the results of such an evaluation may reduce the likelihood of legal claims against the service provider.

In carrying out an audit, it is recommended that service providers seek the views of people with different disabilities, or those representing them, to assist in identifying barriers and developing effective solutions. Service providers can also draw on the extensive experience of local and national disability groups or organisations of disabled people.<sup>28</sup>

There are now consultants who have developed considerable knowledge and experience in this area, and who have seen what does and does not work in other cases. They may also be able to advise on local architects and builders with experience of such works. Large churches, or possibly a group of small churches, may find it sensible to hire such ‘experts’. But producing an access audit could be done by a small group of lay people—who will after all have the great advantage of knowing well how the church actually operates.

#### *Stage one: altering procedures and providing auxiliary aids*

As noted above, the first and most obvious type of change that may be necessary may be simply to alter practices, policies and procedures—which will be free, or at least not particularly expensive—or to provide simple auxiliary aids.

<sup>28</sup> Code of Practice, paras 5.42, 5.43.

So, for example, it may be necessary to ensure that there is a side door open, that is accessible without steps (or with fewer steps) as well as the main door up a flight of steps—that may be a perfectly acceptable alternative to providing a costly ramp up to the main door, especially where the church building is listed. Or a church may have to hold the early communion service, or the mid-week meeting, in a room which has good access for the less mobile, rather than in a chapel up a few steps or an upstairs room. A church with its own car park should ensure that the spaces nearest to the building (or which are otherwise most appropriate) are kept available for those who particularly need them. And there should be no pressure for members of the congregation to adopt particular postures at different points in an act of worship (for example, kneeling to receive communion), which may be difficult for some.

It will almost always be appropriate for a church to have available copies of the regularly used material in large print, or (possibly) Braille—but how many copies should be available will be a matter of discretion: clearly there should be enough for all regular members who need them, with a few for visitors. But it would probably not be necessary to have the weekly news-sheet available in large print—although that might be necessary in the case of a very large church. Large churches might also need to consider providing a sign language interpreter for at least some services and meetings. Direction signs should be clearly laid out and well lit. And an induction loop to assist the hard-of-hearing would be sensible, subject to the cost of installation—certainly one should be installed when any alterations are carried out.

It should also be remembered that it is important that any special provisions made should be well-publicised, and actually available—there is no point in buying large-print hymn books if the partially sighted do not know that they are on offer, or if the sidesmen do not know where to find them. And if a notice announces that help can be made available in response to ringing a bell, there must be someone there to respond promptly whenever the bell is rung. Further, it is likely that some special arrangements or special devices will be relatively little used; it then becomes important to ensure that their availability and condition is checked from time to time—many is the church where the disabled WC is regarded as a convenient place in which to store the cleaning materials, so that there is then no room to manoeuvre a wheelchair. Or the Braille hymn books are not replaced when the new chorus books are acquired.

This is nowhere near a complete list; each church will suggest different measures. Many ideas will arise from considering the examples in the *Code of Practice*<sup>29</sup> and the various material produced by the dioceses.<sup>30</sup>

<sup>29</sup> *Code of Practice*: paras 5.4 to 5.9 (practices, policies and procedures), and paras 5.10 to 5.30 (auxiliary aids and services).

<sup>30</sup> See note 19 above.

*Stage two: overcoming barriers created by physical features*

Sometimes, however, merely altering procedures will not be enough; the only solution will be to alter the building itself.

The first physical feature to be considered is usually steps. These are obviously difficult for those in wheelchairs, but also for those with children in pushchairs, and those who are generally less agile. So a ramp can be provided. But a ramp must not be too steep, or it may cause as many problems as it solves; and some disabled people positively prefer steps to ramps—so it is best to have both. And the top step of a flight should have a tactile surface to alert the blind to a potential falling hazard. Nor should it be forgotten that, to avoid the problems caused by external steps, it may be easier to alter the ground level around the church building—although care should be taken not to impair the operation of any damp proof courses.

In practice, at least as tricky as steps are heavy doors, which can be very difficult for those in wheelchairs or with pushchairs, and also for the frail and arthritic. But providing automatically opening doors may create a danger if they allow smaller children to run out unsupervised onto a road or car park. It is thus important to ensure that making life easier for one group does not create major hazards for others. So, for example, in the *Dorchester case*,<sup>31</sup> the removal of a Victorian draught lobby was said to be necessary to allow entrance to the Abbey by wheelchairs; of the two alternatives considered, one would have impeded exit in case of fire; and the other would have caused difficulties for the partially sighted. None of the options proposed was ideal; but the best compromise had to be found.

In particular, it is better wherever possible to arrange for all who use the building to be able to do so in the same way, rather than to provide an 'alternative' for the disabled. This is the approach known as 'inclusive design'. The *Code of Practice* rightly points out that:

Although the Act does not place the different options for overcoming a physical feature in any form of hierarchy, it is recognised good practice for a service provider to consider first whether a physical feature which creates a barrier for disabled people can be removed or altered. This is because removing or altering the barriers is an 'inclusive' approach to adjustments. It makes the services available to everyone in the same way. In contrast, an alternative method of service offers disabled people a different form of service than is provided for non-disabled people.<sup>32</sup>

In the light of all these various considerations, working out in detail what is most appropriate is thus clearly a matter for specialist advice, and may well be a matter suitable to be considered in connection with the carrying out of the quinquennial inspection. Further, given that physical alterations

<sup>31</sup> *Re Dorchester Abbey* (2002) 7 Ecc LJ 105, Oxford Cons Ct.

<sup>32</sup> *Code of Practice*, paras 5.38, 5.39.

are expensive, it may be appropriate—particularly, for example, in the context of nearby small churches in sparsely populated rural areas—for alterations to be made only to one church out of a group. This is not least on the ground that those people whose disabilities are of a kind likely to result in the need for physical works tend to go to church by car, and therefore can if necessary drive or be driven to a better equipped church further away.

*Carrying out works*

Of course none of this obviates the need for a faculty for any works that seem to be desirable or, in the case of external works, planning permission. Indeed, the relevant secondary legislation provides specifically that where consent is required for the carrying out of works that may reasonably be required under the Act, there is no duty to carry out those works before that consent has been obtained.<sup>33</sup> Thus, in the *Dorchester* case, the chancellor observed:

However, although [the requirements of section 21 of the 1995 Act] are binding statutory obligations, they do not oust the faculty jurisdiction. Nothing can be done without first obtaining the authority of a faculty...

It is here that there may arise a seeming conflict between the provisions of the 1995 Act and the faculty jurisdiction. This is because there may be cases where the value of a particular architectural item sought to be removed in pursuance of the 1995 Act is so great that it nonetheless ought to remain unaltered for posterity; in such a case, the removal or alteration would in itself be unreasonable when seen within the wider context of the national heritage. In those circumstances, it would be the duty of the consistory court to rule that the presumption for its retention outweighs the argument for change based on disability discrimination. Each case, of course, will depend on its individual facts, but the service provider will fulfil his or her obligation to take such steps [under section 21] ‘as are reasonable’ by pursuing the petition to the court.

And there is no statutory or other duty on diocesan advisory committees, chancellors or planning authorities to have regard to disability issues—as there is in relation to historic buildings.<sup>34</sup> But it is perhaps wise for them (and for applicants) to reflect on the guidance of the Secretary of State in PPG 15:

It is important in principle that disabled people should have dignified easy access to and within historic buildings. If it is treated as part of an integrated review of access arrangements for all visitors or users, and a flexible and pragmatic approach is taken, it should normally be possible to plan suitable access for disabled people without compromising a building’s special interest. Alternative routes or re-organising the use of

<sup>33</sup> Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations 2001 (SI 3253), reg 3(2).

<sup>34</sup> An amendment to the Planning and Compensation Bill currently before Parliament is seeking to deal with this.

spaces may achieve the desired result, without the need for damaging alterations.<sup>35</sup>

Finally, it may be noted that the Centre for Accessible Environments (CAE)<sup>36</sup> maintains a database of local architects and surveyors who can assist in the planning and implementation of necessary building works.

## 5. ENFORCEMENT

Finally, it is important to be clear that there is no criminal liability for failure by service providers to comply with duties under the 1995 Act. There is thus no entitlement for a local authority, or the DRC, or anyone else, simply to enforce those duties in the abstract.

Instead, a disabled person who claims to have been the subject of discrimination has a right of action to sue the provider in the county court—and may seek damages (amongst other things, as compensation for injury to feelings). The details are in section 25 of and Part II of Schedule 3 to the Act. It may also be possible to seek an injunction. Clearly, in response to such an action, a church would need to show that it had taken ‘such steps as it was reasonable, in all the circumstances of the case, for it to have taken’.

What approach the courts will take when such actions are brought remains to be seen. However, it is to be hoped that churches will not be the test cases.

<sup>35</sup> PPG 15, *Planning and the Historic Environment*, para 3.28.

<sup>36</sup> Nutmeg House, 60 Gainsford Street, London, SE1 2NY (Tel. 020-7357-8182; web-site [www.cae.org](http://www.cae.org)).