

# Pharmacy practitioners should be reviewing their facilities and premises

This is the first in a series of digests by **Thomas H. John**, pharmacist and barrister, of cases recently decided in the appeal courts of England and Wales, with special emphasis on issues that may impact on aspects of pharmacy practice

## The question

To what extent might the following decision given in the Court of Appeal impact on pharmacy practice in terms of the facilities to be offered or provided to customers, patients or staff using practitioners' premises who are physically disabled?

## The law

The Disability Discrimination Act 1995 (DDA) has been on the statute books for nearly a decade but, perhaps surprisingly, few issues have so far had to be decided by the appeal courts such that they are binding on trial courts (mainly county courts or the High Court). One such recent case, however, decided that equal liability to pay damages to a disabled person could attach to two businesses offering services from the same premises, namely, an airport and an airline.

## The case: Ross v Ryanair and another

*Court of Appeal (Civil Division) before Lord Justices Brooke (Vice-President), Jonathan Parker and Keene. Judgment given 21 December 2004.*

**Facts** Robert Ross, who suffered from arthritis and cerebral palsy, wished to travel on a Ryanair (RA) flight from Stansted airport (S) to his destination. His disability was such that he needed a wheelchair to get from RA's check-in desk to the aircraft. Neither RA nor S disputed that his disability was severe enough for him to require a wheelchair to travel the distance from the check-in desk to the aircraft and RA offered the hire of a wheelchair, but Mr Ross claimed he had still been discriminated against under Sections 19 and 21 of the DDA on the basis he should have been provided with a free wheelchair. The county court judge found that RA had unlawfully discriminated against him but that S had not done so. RA appealed contending it had not unlawfully discriminated and Mr Ross also appealed (called a cross-appeal in



## How to read this article

To obtain optimum benefit it is suggested that practitioners read the question or questions posed at the outset of the digest, then read the facts and the issues arising, then the decision of the court together with the reasoning behind the decision. The question or series of questions should then be reread and consideration given as to whether any lessons can be learnt in terms of practitioners' practices.

legal terminology) contending that S, too, had discriminated against him and that it, therefore, should pay or at least contribute towards his damages.

**Issues** Among the issues the Court of Appeal had to decide were, therefore:

- Whether RA or S, or both, was under a legal duty to provide wheelchairs free of charge to disabled passengers
- Whether RA had, after all, discriminated against Mr Ross contrary to Section 19(1)(d) of the DDA
- Whether S had also discriminated against Mr Ross contrary to Section 19(1)(d) of the DDA and, if so,
- The extent to which RA and S should contribute between them in respect of their liability to pay damages to Mr Ross

**The decision and reasoning** The Court of Appeal decided that RA did have an obligation to use its best efforts to carry Mr Ross (and his baggage) from the airport to the des-

tinuation and back because Mr Ross had purchased a ticket as a result of which he had been provided with a boarding pass. This established a contractual relationship between RA and Mr Ross and simultaneously engaged the relevant provisions of the DDA as between them. There was, of course, no contract between RA and S and so neither had any obligation as between themselves to provide a wheelchair service from check-in desk onwards. Both RA and S were, however, obliged to get Mr Ross safely to the airside part of the airport since they had assumed a duty of care towards him as occupiers of the airport premises. Mr Ross was entitled to go to and through the airside parts (owned by S) as the boarding card was effectively the key that unlocked the door to those parts. Furthermore, the relatively long distance between check-in and the departure gate made it unreasonably difficult for disabled persons to make use of the service involved in gaining access to and use of the airport's airside. The court, therefore, found that the combination of Sections 19(2)(a) and 21(2)(d) of the DDA imposed an obligation on both RA and S to provide a reasonable alternative method of accessing that service to a disabled person. Since use of an aid such as a wheelchair would facilitate such people's use of the service it was a legal duty on both RA and S to take reasonable steps to provide a wheelchair. Mr Ross was, therefore, entitled to enjoy access at no cost over and above what he had already paid for his ticket and boarding card.

Since this duty was owed to all disabled persons (as a class of people) it was irrelevant that any individual disabled person might have the financial means to hire a wheelchair. Given the financial resources of both RA and S it was reasonable for them to provide such an aid at no cost.

Accordingly, the Court of Appeal found that both RA and S had unlawfully discriminated against Mr Ross contrary to Section 19(1)(b) DDA, and the county court judge had been wrong to find that S were not liable.

RA had discriminated against Mr Ross for a reason related to his disability (the test for liability under the DDA), namely, that he had restricted mobility and did not have a wheelchair at the time he presented himself at the check-in desk. RA had, therefore, treated him less favourably than it would have treated others to whom that reason did not apply.

S on the other hand was not entitled to say

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that it was RA alone that should have provided a free wheelchair thereby absolving itself of liability. Its breach was just as serious and its failure was in no way excused simply because RA had broken the law. For that reason the court ordered that S contribute 50 per cent of RA's liability for damages and interest.

### Discussion

One can easily draw legal analogies between the scene at Stansted airport and many premises from where pharmacy is practised. If we consider that RA is analogous to the pharmacy department, S the owner of premises in which that pharmacy or department is situated, the check-in desk analogous to the entrance to the premises and the pharmacy counter (the destination of the customer within the premises) the aircraft, then it may not be difficult to picture your individual practice in similar terms to those in which the Court of Appeal came to its decision in the Ross case.

Are your facilities and procedures equipped such that you would not be liable to disabled persons? Liability could arise because of the geographical layout of your premises. For example, you may be operating a pharmacy situated within a much larger building, eg, a private hospital, a shopping mall or a supermarket. Perhaps you own the whole building or merely run your pharmacy as a franchise to a larger organisation.



What if, for instance, a customer or patient using a large supermarket where there is a pharmacy department situated well away from the store entrance realises he or she needs assistance in reaching the pharmacy counter? If the supermarket owner has failed for whatever reason to provide assistance, should the pharmacy take its own steps independently to offer assistance? How realistic would this be in practice when the customer or patient will already have suffered discrimination before he or she reaches the pharmacy counter?

The case does not necessarily restrict itself to members of the public as your patients or

customers. You may have engaged a disabled person as a temporary or permanent member of staff. Perhaps you work in a supermarket pharmacy where staff, some of whom may be disabled, are "borrowed" from the general pool of employees from time to time. Perhaps you are thinking of engaging a locum while you go on holiday and who may, unbeknown to you, turn out to have a physical disability.

Of course, only you know how much the decision in Ross is likely to be relevant to your individual circumstances. Nevertheless, it is clear that the courts are prepared to apportion liability for discriminatory practices between those it sees as in a position to influence policies under the DDA and who are endowed with the financial resources to pay damages in cases where those policies are deficient. Of course it is not seriously being suggested that every person Mr Ross came into contact with at Stansted on that day should be liable to pay him damages simply because it did not occur to them or they were unaware of the need to provide him with the use of a free wheelchair. Pity the poor newspaper vendor or ice cream salesman who happened to deal with Mr Ross if that were the case. But pharmacy as a profession is not thought of by the public (and, therefore, presumably by the courts) as being without influence or funds. Practitioners, if they are not already doing so, would be well advised to review their facilities and premises in the light of this case.

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