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Welsh Assembly Government
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3 February 2004

Dear Adrian

**NATIONAL COUNCIL RESPONSE TO NATIONAL AUDIT COMMITTEE
RECOMMENDATION**

**Progress made by FE institutions in addressing the requirements of the Disability
Discrimination Act 1995**

My letter of 12 December 2003 referred to difficulties we had in meeting the December deadline for providing the above response, and it was agreed that we would submit the Council's report in time for the Committee's February meeting. Accordingly, the report is attached here.

I hope that the enclosed report provides you with the information you need at this stage, but please contact my colleague Mrs Lesley Virgin, Head of Compliance (telephone: 01443 663736), if you have further queries.

Yours sincerely

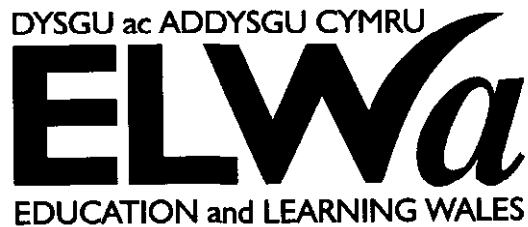


Dr Peter Higson
Interim Chief Executive

enc

cc Sir Jon Shortridge KCB, Permanent Secretary
Mr Neil Thomas, Head of Lifelong Learning Division
Mr David Powell, Assembly Compliance Officer
Sir John Bourn KCB, Auditor General for Wales, National Audit Office Wales
Mr James Verity, National Audit Office Wales

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AE DYSGUN GWEITHIO!



**REPORT TO THE NATIONAL ASSEMBLY FOR WALES AUDIT COMMITTEE
BY THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR
WALES**

MANAGEMENT OF THE FURTHER EDUCATION ESTATE IN WALES

**PROGRESS MADE BY FURTHER EDUCATION INSTITUTIONS IN
ADDRESSING THE REQUIREMENTS OF THE DISABILITY DISCRIMINATION
ACT 1995**

JANUARY 2004

MANAGEMENT OF THE FURTHER EDUCATION ESTATE IN WALES

**Report to the National Assembly for Wales Audit Committee on progress
in addressing the requirements of the Disability Discrimination Act 1995**

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INTRODUCTION

1. This paper reports on progress being made by institutions in the further education (FE) sector in Wales in addressing the requirements of the Disability Discrimination Act (DDA) 1995. This Act was amended in 2001 by the Special Educational Needs and Disability Act, and the paper takes this into account.
2. The paper responds to a recommendation that the National Council report back to the National Assembly for Wales Audit Committee on this matter by December 2003. Extension to this deadline and completion of the report in January 2004, as agreed with the Clerk to the Committee, has enabled the Council to incorporate relevant information on its ongoing consideration of future budget planning.

BACKGROUND

3. In February 2003, the Auditor General for Wales (AGW) presented to the Assembly Government his report 'The Management of the Further Education Estate in Wales'. The report included consideration of the impact of disability legislation on the sector's estate, using as a basis the findings of a disability access audit commissioned by ELWa in 2001. The audit had identified an estimated cost of over £20 million (excluding professional fees and VAT) to make adjustments to physical features of premises required as a consequence of the Act.
4. The report also gave the current estimated cost of bringing the FE estate up to standard and maintaining it there for ten years as in the order of £60 -£80 million. A proportion of this, £20-£40 million, represents the cost of addressing backlog maintenance. The £20 million required to address DDA is a further burden on the FE estate.
5. The National Assembly Audit Committee considered the report and presented its recommendations to the Assembly Government in August 2003. The Committee was concerned at the scale of work required to make the FE estate compliant with the DDA, and recommended that **.....in terms of meeting their obligations under the Disability Discrimination Act 1995, institutions should, with the support of the Council, as a minimum address immediately and with the utmost urgency those works which should already have been implemented.** It was further recommended that the Council report back to the Committee by December 2003 on the progress being made in addressing the requirements of the DDA.

LEGISLATION

6. The Disability Discrimination Act 1995 placed requirements on employers and service providers not to discriminate against disabled people. The Special Educational Needs and Disability Act (SENDA) 2001 amended the DDA and placed duties on providers of post-16 education.
7. The DDA as amended by SENDA requires implementation of the new duties in three main stages:
 - Since 1 September 2002 it is unlawful to discriminate against disabled people or students by treating them less favourably than others. In addition FE institutions are required to provide reasonable adjustments to provision where disabled students or other disabled persons might otherwise be substantially disadvantaged.
 - Since 1 September 2003 FE institutions are required to make adjustments involving the provision of auxiliary aids and services.
 - By 1 September 2005 FE institutions have a duty to make adjustments to physical features of premises where these put disabled people or students at a substantial disadvantage.

8. The application of these dates extends the deadlines for compliance presented in the AGW report. The disability access audit was commissioned and undertaken in 2001 prior to the publication of the report.
9. To ensure that all areas in the colleges were covered by the survey, including those not predominantly used by students (eg conference centres), the survey aligned compliance with requirements and dates in Part 3 of the DDA 1995. Therefore, physical adjustments as required of FE institutions by SENDA were included, but SENDA compliance dates were not.
10. The audit identified the estimated cost of the work required in the sector for DDA compliance under four categories according to priority (see **Annex A**). The compliance dates as reported to the AGW did not take account of completion dates as required by SENDA. As these are of significance when assessing progress overall, Annex A includes the deadlines applicable to the DDA as amended by SENDA.

NATIONAL COUNCIL SUPPORT

11. The National Council recognises the priority to comply with the DDA as amended by SENDA, and has continued to take steps to emphasise this priority and enable the institutions to make progress.
12. Following the disability access audit, and under the leadership of ELWa, the Access Audit Working Group was established to provide sector-wide feedback on the audit and its implementation. The group identified that guidance on the preparation of an action and implementation plan would be of benefit to the colleges. Guidance for an Action and Implementation Plan was published and distributed in October 2003. In recognition of the colleges' limited financial resources, the plan was devised as a form of 'toolkit' to assist them to prioritise their DDA works.
13. Of the FE colleges, 20 now either have an action and implementation plan in place, or are in the process of compiling one. Follow-up by ELWa officers with the remaining three colleges will focus on assisting them to make progress on their plans.

FUNDING

Capital funding 2003/04

14. As reported to the Assembly Government in 2003, the total FE capital funding quantum of £11 million earmarked by the Council was allocated pro rata to institutions as formula-based capital allocations for the academic year 2003/04. Formula capital funding is an extension of the recurrent funding methodology used to allocate core funding to the FE sector. The total quantum of formula capital is allocated according to the volume of learning offered, quantified in weighted student learning units, subject to a minimum allocation.
15. In light of the level of backlog maintenance in the sector and the need to address priority works required by DDA legislation, capital funds were allocated in their entirety in March 2003. This decision was taken in light of the AGW report, and with regard to the financial position of the FE sector. The audited accounts of FE institutions show that the sector moved from an overall operating surplus of £4.4 million in 1999/2000 to a deficit of £292k on 2001/02.
16. Colleges are faced with competing priorities, and they were reminded that in deploying their capital allocations, they should give priority to legislative work such as that needed

to comply with the DDA, and to focus on accommodation identified within their estates strategy as requiring improvement.

Monitoring

17. Institutions are required to agree their proposals for deployment of capital resources with ELWa. Their submissions this year were subjected to particular scrutiny. Colleges were required to provide additional information in the form of a detailed breakdown of intended use, under six headings, including their proposed deployment in respect of DDA compliance works.
18. In assessing the proposed deployment of capital allocations by each institution, ELWa had regard to the demands placed on institutions in respect of their estate. The total capital allocation of £11 million is being deployed for estate maintenance works, capital projects, acquisition of equipment and other legislative work in addition to that required for DDA compliance. Proposals for the use of the funding agreed with each institution formed the basis of their deployment of the formula capital allocations.
19. Through closer and more focussed monitoring than previously, it has been established that the FE colleges are apportioning 14% of their capital allocation to DDA compliance works. This amounts to a total spend of around £1.5 million for 2003/04. Further progress should therefore be evidenced in respect of the outstanding DDA compliance works.
20. In addition to the increased scrutiny of the deployment of capital funding overall, a questionnaire was issued in August 2003 to all the colleges included in the audit survey to establish the current situation in the FE sector in addressing DDA-related work. The survey established that some progress in addressing urgent works (categories A & B as identified by the Disability Access Audit) has been made. However, work amounting to 68% of the total estimated cost of categories A & B works remains outstanding. The sector requires a budget of around £6.5 million to meet the Committee's recommendation to address those works that should already have been implemented. Ninety-five per cent of the estimated cost of categories C & D work (as identified in the audit) remains outstanding. The sector therefore needs to spend nearly £17 million in total to ensure reasonable compliance with the DDA, as amended by SENDA, by 1 September 2005.

Control

21. A Funding Agreement exists between the National Council and each institution. The Funding Agreement is a schedule to the Financial Memorandum between the Council and each institution and it sets out the broad conditions of funding and targets associated with the institution's allocation of recurrent and capital funding for the one-year funding period.
22. The Funding Agreement stipulates that the formula capital funding allocated directly to the institution must be deployed for the purposes specified by the institution. The institutions are required to agree their proposals for the deployment of capital, including expenditure on DDA works, with ELWa.
23. The head of an institution and the institution's external auditors will be required to confirm that all capital funding has been expended for the purposes for which it was received. The institutions are however, autonomous, self-governing corporate bodies and the Council's power to enforce particular actions is limited to the application of conditions of funding. Conditions of funding require institutions to fulfil their responsibilities under DDA and SENDA. In the deployment of capital funds, institutions are reminded that particular attention should be paid to priority legislative work and those parts of their accommodation identified within their estates strategy as requiring improvement.

Capital funding 2004/05

24. At its meeting in November 2003, the National Council considered issues arising from the AGW report on the management of the FE estate, and related Assembly Government expectations. As a result, a report is being prepared for the Council on the financial and customer risks associated with DDA implementation and deadlines.
25. The Council took account of the need to respond to the issues raised in the report in budgetary planning, and to ensure that the new funding system will enable a response to estates needs. Specifically, the Council took account of the need for a dedicated financial allocation to support institutions' compliance with the DDA. These items are being considered as part of the current operational and budget planning process for the financial year 2004-05.
26. Consideration is being given to the allocation of capital funding on a non-formula basis. It is intended that the new national funding system will enable funding to be targeted on priorities and areas of greatest need. The new system is not due to be introduced before the academic year 2005/06. To cover the interim period, approval is being sought from the National Assembly for a scheme which will enable ELWa to allocate current funds on a targeted basis.

DISABILITY STATEMENTS

27. The DDA/SENDA cover aspects wider than those relating to physical access to learning by those with learning difficulties and/or disabilities (ie bullet points 1 and 2 at paragraph 7 above). Action taken by the Council to assist institutions to comply with legislation similarly covers the range of support and adjustments needed.
28. As well as the capital funding referred to above, additional funding can be made available to institutions to make mainstream provision more accessible to learners with learning difficulties and/or disabilities. The funding can be used for technical support (eg laptop computer; personal computer with special facilities) and human support (eg sign language interpreter). Requests for this funding are met each year as ELWa's budget allows.
29. As a condition of funding, colleges are required to fulfil their responsibilities under the DDA, as amended by SENDA in 2001. The responsibilities relate to a range of aspects of the learning experience, and include accessibility in its broadest sense. Each institution is required to provide the Council with a Disability Statement which must be published and updated by 1 October each year. The statement does not influence funding allocations. It is a monitoring tool in that ELWa funding is conditional upon statements being honoured. In the event of non-compliance with the terms of a statement, as determined by ELWa assessors, or following investigations into complaints, there is a reclaim of funding.
30. Disability statements were received from all colleges in 2003. Eighteen colleges indicated that their statement is available in different formats including audio tape, large print, Braille, pictorial and Welsh. One college indicated its willingness to read the statement to any learner who requested this. Ten colleges have posted their statement on the college website. Fourteen colleges refer to links with external organisations such as the Royal National Institute for Deaf People, Royal National Institute for the Blind, social services and Careers Wales careers companies.
31. In the statements submitted in autumn 2003, 18 colleges included reports on capital developments to facilitate access for learners with learning difficulties and/or disabilities, using the 2002/03 capital allocation. Reporting on the accessibility of campuses included information on car parking, toilets for the disabled, the availability of lifts and hoists, and access to classrooms and canteen facilities. Five colleges included information on effected or planned improvements in accessibility. In June 2001, colleges were asked to take steps to evaluate the effectiveness of their disability statements. ELWa

recommended that the colleges include the views and perspectives of staff and disabled learners when drafting and reviewing the statements. Colleges were issued with a framework to use when evaluating and updating their statements. Seven colleges now include evaluation forms with the disability statement in order to obtain feedback from learners.

CONCLUSION

32. Colleges have given priority to the most urgent works in respect of DDA compliance and progress has been made. Most have plans in place to address legislative requirements. There does not appear to be a lack of commitment, or understanding of what is required, on the part of the colleges. They have completed work as feasible in light of the available resources and competing priorities.
33. This reflects the realism inherent in legislation and the expectations of the AGW. The 'Code of Practice for Providers of Post-16 Education and Related Services' (DDA Part 4) requires each educational establishment as *a responsible bodyto make reasonable adjustments for disabled people and students*. The Code advises that the extent to which it would be reasonable for a responsible body to make adjustments will depend on the financial resources of the particular responsible body and its other commitments. Similarly, the AGW recommendation was that work on categories A and B should be completed as soon as institutions' resources allowed. In light of competing calls on their budgets, institutions have demonstrated that they have acted as 'responsible bodies', taking steps as reasonably practicable to avoid discrimination.
34. We are not aware of indications that disabled learners are unable to access the learning they need. Equally, we are aware of the potential for institutions to 'manage out' - that is to resolve difficulties of access by, for example, altering a work/study pattern or organising some form of assistance, to obviate the need for what might be a costly structural adjustment. 'Managing out' may have been employed in addressing the requirements already met, and the money spent may actually have addressed a greater proportion of the works outstanding than implied by the total expenditure. Similarly, this approach could be used to address some of the remaining works, thus reducing the overall remaining cost.
35. However, ELWa is concerned that full DDA compliance is yet to be achieved. Resources have not permitted completion of all the work required. It is estimated that some £6.5 million is still required to complete works within categories A and B. For the sector to be reasonably compliant by September 2005, a total spend of nearly £17 million (excluding professional fees and VAT) is indicated.
36. Even with some reduction through using alternative solutions, it is evident from the estimated costs of outstanding work that, without a significant additional resource dedicated to DDA works, progress will be gradual, and it will not be possible for the sector to meet deadlines in all cases. It should be remembered as well that, even with sufficient resource, decisions to earmark its use for DDA works could be at the expense of other needs, including legislative requirements in other areas.

ANNEX A

DISABILITY ACCESS AUDIT 2001

Prioritisation and estimated costs of DDA-related works

Classification	Definition	Implementation Date Applied	Estimated Cost
A	All elements that have an implication under both DDA and other mandatory legislation including the Health and Safety at Work Act, Fire Precautions Act, and Workplace Health, Safety & Welfare Regulations	Should have already been implemented at time survey was undertaken	£3,985,315
B	All organisational elements necessary under Section 21 of the DDA. This may include altering practice, policy or procedures to ensure that it is neither impossible nor unreasonably difficult for a disabled person to make use of the services the college is offering.	October 1999 (SENDA 1 September 2003)	£6,301,170
C	Adjustments to all physical elements of premises to overcome physical barriers to access as required under Section 21 of the DDA.	1 October 2004 (SENDA 1 September 2005)	£9,598,205
D	Relates to all elements that can be undertaken as part of the ongoing maintenance programme.	1 October 2004 (SENDA 1 September 2005)	£845,765
		Total Cost	£20,730,455