

Disability - Equality

The Disability Discrimination Act 1995 (DDA) and the Disability Discrimination Act 2005 placed duties on employers and the providers of goods and services to not discriminate against disabled persons. These requirements have now been consolidated in the Equality Act 2010 which came into force on the 1st October 2010.

It should however be remembered that as with the DDA, the Equality Act is not health and safety legislation and there is not an enforcement agency. If an individual wants to take legal action they must take their case to an Industrial Tribunal for employment issues, and to a Court of Law for services and goods issues.

Definition of “Disabled”

A disabled person is defined as someone with “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”. Dutyholders (A duty holder is the employer or service provider occupying a building, whether they own the premises or lease them from another party) must remember that there are many forms of disability which they will need to consider.

These include:

- sensory impairments (e.g. to sight or hearing);
- impairments that can have recurring effects such as rheumatoid arthritis, myalgic encephalitis (ME)/chronic fatigue syndrome (CFS), fibromyalgia, depression and epilepsy;
- progressive conditions such as motor neuron disease, muscular dystrophy, forms of dementia and lupus (SLE);
- organ specific diseases including respiratory conditions (asthma, and cardiovascular diseases, including thrombosis, stroke and heart disease);
- developmental conditions such as autistic spectrum disorders (ASD), dyslexia and dyspraxia;
- learning difficulties;
- mental health conditions and mental illnesses, which include depression, schizophrenia, eating disorders, bipolar affective disorders, and obsessive compulsive disorders;
- conditions resulting from injury to the body or brain.

Duty Holders - What you need to do

Access to Services

There is a requirement to take action where a physical feature makes it impossible or unreasonably difficult for the disabled person to make use of the service. It is unlawful for a

provider of services (such as a retail outlet) to discriminate against a disabled person in refusing to provide or deliberately not providing to the disabled person any service which he provides or is prepared to provide to other members of the public.

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 they provide, or are prepared to provide, to the general public, it is their duty to take reasonable steps to change that practice, policy or procedure so that it no longer has that effect.

It is unlawful for a person with control over any premises to discriminate against a disabled person:

- in the terms on which he offers to dispose of those premises to the disabled person ;
- by refusing to dispose of those premises to the disabled person;
- in his treatment of the disabled person in relation to any list of persons in need of premises of that description.

The management of multiple occupied commercial buildings is considered as the provision of a service, therefore physical features that hinder access into and within the common parts of the building need to be considered. The building manager therefore must take 'reasonable' steps to alleviate the difficulties associated with physical features. The Act does not require one particular method to be used over others, but places the focus on the end result. Options may include:

- remove the feature
- alter it so that it no longer has that effect
- provide a reasonable means of avoiding the feature
- provide a reasonable alternative method of making the service in question available to disabled persons.

It is worth noting that to make services accessible it may not be always necessary to make a physical alteration to the premises. Often, minor measures such as allowing a disabled customer more time may be sufficient. However, adjustments in the form of physical alterations may be the only answer if other measures are not sufficient. Such alterations may also prove more cost effective in the long term.

When identifying possible physical adjustments that need to be made, the dutyholder should consider the full range of possible disabilities. They may find that carrying out an access audit will help them to do this in a systematic and formal way.

The purpose of an access audit is to establish how accessible a building is and how easy it is to use for a wide range of potential users, and can be used to highlight areas for improvement. The auditor should be someone who has knowledge of the building and how it is used. They need not be a design expert, but they should be a good observer and diligent at recording details, and have some technical knowledge of buildings and how they are constructed.

The most important factor which determines a building's accessibility is its fabric or shell. Fixtures, fittings, furniture and equipment can also impact on a building's accessibility. Finally, the manner in which the building is occupied can also affect accessibility; for example circulation can be hindered by sloppy working practices.

What is Reasonable?

Various factors need to be taken into account when considering what is reasonable, and the following list is not exhaustive:

- whether taking steps would be effective and overcome the difficulty faced by disabled people
- the extent to which it is practicable for such steps to be taken
- the costs of making the necessary adjustments
- the amount of any disruption caused by implementing measures
- the extent of the service provider's available resources
- the amount of resources already allocated on making appropriate adjustments
- the amount of assistance available.

From December 4th 2006 the duty of reasonable adjustment (other than in respect of physical features) was extended to those who let or manage rented premises, and to common hold premises. Also since December 4th 2006, landlords have not been able to unreasonably withhold consent for a disability-related improvement to certain rented dwelling houses.

Carrying out Access Audits

In order to carry out an audit, it is suggested that the auditor equip themselves with plans of the building and a tape measure. The plans can be used to index the findings of the audit, and identify priorities for improvement. They should not be used for determining measurements. The recommended order for carrying out an audit is:

- approaches to the building
- entering it
- moving around inside and using its facilities
- exiting the building
- building management.

The access audit process can be divided into two aspects: information gathering, and reporting the results and recommendations. The report should clearly record the findings of the information-gathering effort, and should also suggest or outline potential improvements based on the findings. These improvements may range from non-structural changes, for example, re-locating furniture, to major structural alterations. Please refer to the Basic Access Checklist in the document library.

Any work or solutions should be prioritised - determining priorities may depend on a number of factors, including:

- the policies and objectives of the building occupier
- current and proposed use of the building
- costs and available resources
- existing plans for refurbishment and alterations
- maintenance programmes
- availability of consent of others such as landlords or local highway authorities.

In looking at the approach to the building some of the factors that need to be looked at include:

- the width of the approach route and the condition of the surface
- whether it is adequately lit and clearly signed

- whether it is free of hazards such as bollards, and outward opening doors or windows.

The requirements for car parking, external ramps and steps, doors and entrances, reception areas and lobbies, corridors are similar to those specified in the Building Regulations. The same is true for sanitary accommodation and facilities, and the acoustic environment.

The audit should also cover the means of escape (e.g. in case of fire), including the provision of an audible alarm with visual system. The way in which the building is managed should also be covered in the audit. Checks should be made to ensure external routes are kept clear and clean of snow, ice etc. Circulation within the building should be free and unobstructed, and facilities such as WCs, etc should be available and not put to other uses, such as storage. The fabric, internal surfaces, signage and lighting should be well maintained.

Any services provided in the building, such as induction loops, should be checked to see they are working properly.

Access Statement

To assist people to know whether access to a building for disabled people is suitable, it is recommended that an 'Access Statement' is provided and updated to reflect decisions reached on site as the project progresses.

Updating the Statement provides the end-user of the building, who may have ongoing obligations, with a record of decisions made which had an impact on accessibility, and of the rationale for such decisions. It should be noted that planning guidance on access recommends the provision of an Access Statement to identify the philosophy and approach to inclusive design adopted, the key issues of the particular scheme, and the sources of advice and guidance used. The Statement should be complementary to the information provided as part of the planning process, and not a separate document.

Employment

The Act also makes it unlawful for an employer to discriminate against a disabled person whom he employs.

Employers may have to make reasonable adjustments where their employment arrangements or premises substantially disadvantage a disabled person. Where physical features of an employer's premises make it difficult for disabled people to use the facilities, then there is a requirement on employers to prevent the features in question from having that effect. This could be the way in which the building services are arranged, or the way in which working practices are organised at the time.

Employees and agents of employees, landlords of premises occupied by employers and trustees and managers of occupational pension schemes also have duties under the Act.

Training, transfers, promotion and access to facilities are all covered by this law.

The Act makes it unlawful for an employer to discriminate against a disabled person:

- in the arrangements which he makes for the purpose of determining to whom he should offer employment
- in the terms on which he offers that person employment
- by refusing to offer, or deliberately not offering, employment.

References

Equality Act 2010: accessible via the following link:

<http://www.legislation.gov.uk/ukpga/2010/15/contents>

Further Information

Advice concerning access to buildings is available in BS 8300:2009 'Design of Buildings and their Approaches to Meet the Needs of Disabled People', with further guidance on all aspects of discrimination are available from the Equality and Human Rights Commission on their website: www.equalityhumanrights.com
