

A DISCRIMINATING MARKET

With the population ageing the view of the disabled needs to be widened. If you need glasses to read this you could be considered disabled. FCSI consultant Geoff Ward outlines the current legal position and suggests some solutions.

The wording within the Disability Discrimination Act (DDA) raises some important points, most of which are open to interpretation. These points are: what is reasonable, what makes a person disabled, who is going to police it, what happens if you don't comply. Taking these points individually:

WHAT IS REASONABLE

Reasonable access is the crux of the DDA and is the part of the Act which is probably open to the most interpretation. The DDA provides no technical requirements, for example on how steep a ramp should be or how high off the ground a handrail has to be. This is not a dereliction of duty on behalf of the DDA as the Act is centred around the rights of the individual. 'Reasonable' is simply what is reasonable for the individual concerned. What maybe reasonable for one may not be another. For example a guest to a hotel may consider it reasonable to be able to ring a bell at the entrance to alert staff that they need assistance to get in. Others may only consider it reasonable if there is complete unaided access without summoning any assistance at all.

Service providers do need to be all things to all people so there has to be some guidance to help at least approach universal accessibility to service. The most widely used guidance is the recently updated Part M to the Building Regulations. This document provides extensive technical information on materials, dimensions, etc but it does also contain a caveat there maybe other things to do to achieve total accessibility.

It is, however, a good reference guide. Other guidance is available from the British Standards Institute. BS8300 on the general accessibility of buildings and BS5588 on the fire evacuation of disabled guests.

By following the likes of Part M and British Standards you have a strong case if you are accused of discrimination under the Act. One often overlooked source of advice is the disabled person themselves.

WHAT MAKES A PERSON DISABLED

The DDA says that a person can be disabled if they have any physical or mental impairment that has a long term adverse effect on their ability to carry out day to day activities. It doesn't necessarily mean an officially registered blue badge holder. Broadly speaking the definition of disabled people include impairments to sight, hearing, speech, mobility, dexterity, learning difficulties, continence and disfigurement.

WHO IS GOING TO POLICE THE DDA

There are no DDA inspectors carrying out inspections of hotels, bars, restaurants and workplaces. The DDA is all about the individual so it is the individual who is going to police it. This means that DDA 'enforcer' could be the guest of a hotel, the diner in the restaurant or any employee in the work place.

WHAT HAPPENS IF YOU DON'T COMPLY

The DDA is not about prosecuting people and leaving service providers with a criminal record. There is no punitive element to the DDA. Instead there are extensive







rights given to disabled people. A disabled person can claim for additional cost incurred to access services due to their disability, compensation for not accessing the service, hurt feelings and humiliation caused as a result of the discrimination.

Anyone who wishes to pursue a claim of discrimination has the legal right to approach the Disability Rights Commission (DRC), the statutory body set up by Parliament to govern the DDA. The DRC has extensive powers to provide assistance to claimants and even serve a 'non-discrimination notice' on service providers, forcing them to make adjustments. Failure to comply with this could lead to a Court injunction.

Claims are, however, usually settled out of court with the assistance of the DRC. Typical cases include a restaurant required to pay £1500 in compensation to a blind person for refusing access to his guide dog. The restaurant was also forced to put up a sign welcoming assistance dogs. Another restaurant refused to serve a diner with a facial disfigurement and, after they offered to serve him a take away as long as he chose quickly, he claimed for hurt feelings and was awarded £2000. A hotel who refused to allow an assistance dog on the grounds that the guest was registered disabled but the dog wasn't, has had to pay £200 in compensation, a free stay and make improvements in accessibility.

HOW CAN A SERVICE PROVIDER STAY 'LEGAL'

A service provider can only be truly said to be non-compliant if a successful claim for discrimination is made against them. This is not, however a pleasant experience and can be a costly one, win or lose. The aim must be to avoid getting in the claims situation in the first place.

There no sure way of being 100% compliant 100% of the time but as long as individual cases are dealt with sympathetically and sensitively this will reduce the risk of a claim being made.

Communication is absolutely key and, however 'compliant' a building maybe, it is worth remembering the broad scope of the Act. The DDA makes it unlawful to discriminate, but for discrimination to take place the person must first feel discriminated against – so talk to them and work something out.

The key issues now are what are "reasonable adjustments". Should a pub widen its thoroughfares to the toilets, open up the doorways; perhaps build an extension incorporating a disabled toilet? How many rooms should a hotel convert to disabled access? Would they get used? Would a guest without disability be happy using a room with disabled facilities? Should a restaurant have Braille menus? How far do you go? Well it's hard to say.

DISABILITY DISCRIMINATION ACT

THE LEGAL ASPECT

There is nothing new about the Disability Discrimination Act (DDA). It first became law, in part, in 1996 and has been progressively introduced over the years. The term 'DDA compliant' is sometimes used to give assurance that premises or service is completely disabled friendly. The DDA lays down a broad statutory duty for provider of services to give equal service to disabled people.

STAGED INTRODUCTION

As mentioned, the DDA has been around for a long time. Although the entire Act was published in 1995 it only began to become law in December 1996.

From December 1996 it became unlawful to treat disabled people less favourably.

From October 1999, service providers had to make reasonable adjustments to the services they provide so that disabled people could access those services. At this stage there was no requirement to make any structural alterations.

From October 2004, service providers had to make reasonable physical adjustments to accommodate the needs of disabled people. This is the final part of the DDA to become law and the part that has caused a flurry of activity despite being in the public domain for almost 10 years

There are other considerations. Many old buildings are difficult if not impossible to convert to full access. The law doesn't require full access with new lifts, stair lifts and ramps at every entrance. The "ambulant disability" issue is potentially the most difficult to solve. For hearing, sight and most other disabilities there is equipment and systems which can support reasonable access to facilities and services.

It might be unreasonable or impracticable to alter certain buildings. Listing buildings can provide major challenges as character and charm may be lost. It's likely the disabled access issue will be led by demand. If your customer's profile involves increasing numbers of disabled customers then it's not only a requirement but it's in your interest to ensure greater access. The key issue is to be always ahead of the potential complaint. Ask yourself 'what have I done proactively to consider disabled access?'. Have I considered disability types? Even though the law requires "reasonable adjustments" it's still very much about approach to the disabled visitor. They are very much less likely to complain if they feel you and your staff have made an effort to communicate.

It starts with the booking and how you make an effort to accommodate their requirements. If you start with "Ah disabled, hey, I can't really help you" then you

PRACTICAL ADVICE

Whatever the premises the by-word for legal compliance is "reasonableness". Audits can be carried out by the owner or manager with a check list but this might be an occasion when consultants, who should have proven relevant experience, can be used to avoid reinventing the wheel as they may have seen similar premises and problems. Criteria to be considered include the practicality and effectiveness of a measure, costs, disruptions, employers financial and other resources and availability of grants and assistance.

The audit should always be pre-arranged to ensure local management input and will normally cover the following logical sequence.

CAR PARKING – suitable location, signage, extra length and width of spaces etc.

APPROACH ROUTES – problems with raised curbs, obstructions etc. Signage.

ENTRY TO BUILDINGS – availability of ramps, safe stairs for ambulant disabled, doors – ease of opening and width.

RECEPTION/LOBBY – big enough for wheelchair users, signage, reception desk height in relation to wheelchair users, portable induction loop system provided for people with hearing difficulties. Reception will need to keep a register of people with special needs for fire purposes, so that the night staff are aware of persons who may need extra help and consideration.

CORRIDORS – reasonably usable by wheelchair users and ambulant disabled including negotiating fire doors, etc.

Negotiating changes of level within buildings – there are defined recommendations for existing passenger lifts e.g. adequate room for a wheelchair, delayed action door closure and door closing override systems etc. Slight rises can be temporarily or permanently ramped, and various types of lift, including vertical and stair lifts can be installed. Staircases used by ambulant disabled and visually impaired need to satisfy various safety criteria, e.g. step edge and landing definition.

TOILETS – a detailed specification can be found in the Building Regulations, and whenever possible the disabled facility should be not further away than other toilets.

GUEST BEDROOMS – adequate provision, ground floor or convenient to lift, with entrance door, refinements relating to space, wardrobes, mirrors, sockets, TV (e.g. teletext for people with hearing difficulties), telephone, alarms including fire and evacuation a, and adapted bathroom.

MEANS OF ESCAPE – hotels in particular need a strategy for disabled emergency evacuation. It is advised that this is agreed with your local Fire Brigade.

In short, audits (and the needs of the disabled) tend to centre on:

- Access to facilities
- Passage within it
- Toilet provision
- Information (way-finding, signage, personal communication)

SOME PRACTICAL SOLUTIONS

Firstly, a reminder and a piece of advice.

- The reminder – you must do only what is reasonable.
- The piece of advice – "There is more than one way of skinning a cat".

Steps up to the front door of a hotel – A suitable alternative route may be available for wheelchair users, which should be adequately signed and communicated at the time of booking. One hotel which has listed building status has a special doorbell and portable ramp for disabled access backed up by CCTV coverage monitored at reception.

RECEPTION – Where the reception desk is raised above the comfortable height for a wheelchair user, a dropped area can be incorporated at normal desk height. Alternatively, reception staff can simply deal with a wheelchair user by sitting down with them in a lounge setting; an example of many situations where the service can be taken to the user rather than the other way around.

CHANGES OF LEVEL – A simple stair lift may be around

£2,000 – a big saving on a platform lift or elevator at around £15,000. Lightweight portable ramps are available but these should not be used as anything steeper than 1 in 12 gradient.

TOILETS – Look first at existing facilities to see if they can be adapted in part for disabled usage, e.g. by turning 2 cubicles into 1.

GUEST BEDROOMS – one hotel has improved the designated disabled-use bedroom. Accepting that the borderline-width door from the corridor could not physically be widened to recommended wheelchairs width (minimum 750mm). Plan B has been implemented and a window has been converted to a French door access with shallow permanent ramp. Wardrobes can be made easier for the disabled by removing doors and adjusting rail heights – this is particularly helpful to wheelchair users who also tend to appreciate ordinary coat hangers rather than the captive type. People with impaired hearing can be assisted in their TV viewing by having the Teletext facility, and your telecom provider should be consulted about the best type of telephone to provide. Guests with visual impairments can be assisted by using room information notices in large type fonts.

FIRE ALARM – alternatives to standard fire alarm sounders include vibrating under-pillows and flashing lights, which connect to the alarm system.

The provision of services for the disabled does not always rely on building alterations and special equipment.

Much can be done by way of communication and staff training and awareness to help things runs smoothly. For instance, the process of taking a conference or function booking benefits from finding out whether any of the attendees have special needs. Such a simple enquiry would have saved one hotel from considerable embarrassment when it was realised on the day that a business meeting in a rather remote upstairs meeting room included a wheelchair user. The guest had to be manhandled up and down stairs, compromising both his dignity and safety.

are in trouble from the start! For events such as weddings you should ask "are there any guests or family which are disabled". They might be better in the 'such and such' room as there is excellent access to that suite. If someone is booking a hotel room there's no harm in saying that "all our disabled rooms have gone but we have another room which we could make suitable for you".

Clearly this is leading to a clear action plan for disabled guests.

- Have your premises surveyed professionally or do it yourself using common sense
- Consider what you might do to make reasonable adjustments
- Decide on your policy on disabled customers and

write it down for reference and staff training

- Train all staff on your procedures for looking after disabled customers
- Consider emergency procedures such as fire and liaise with the authorities

The aim should be to avoid complaints to the DRC, if you have done all of the above you clearly will be found not to have discriminated against the complainant on the grounds of disability. If such a case you'll be fine.

Disabled guests should be seen as an opportunity not a threat. There is one thing for certain – we are all living longer and those who were used to an active life will not easily give up on the things that they enjoy and will be increasingly aware of their rights. You are likely to see a lot more of them as we all get older.

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