

Licensing act 2003 Guidance:

Disability Discrimination Act 1995

This Act is not designed to put an additional burden on licensees. It is designed to incorporate discrimination laws in the light of the recent Human Rights Act. A more tolerant approach by licensees will be expected as far as this Act is concerned. No longer will it be acceptable to turn away disabled people rather than make a small effort to ensure that they also can enjoy an evening of entertainment. From 1 October 2004 the Act will have an even bigger impact upon service providers including licensees of licensed premises. Reasonable adjustments will be expected to be made by them to ensure that disabled people have an equal right of access, and the service provided is as good as that provided to the next person.

Definition of Disability

A person has a disability if he or she has a physical or mental impairment which has a substantial and long term adverse effect on his or her ability to carry out normal day-to-day activities. A disabled person means a person who has a disability.

Disabled people are not necessarily wheelchair users. Also included are people with a hearing impairment, visual impairment and people with motor neurone disease. The definition also covers people with hidden disabilities that are not necessarily physical but simply prevent them from doing a number of things.

Obligations of Service Providers from 1 October 1999

1. To make reasonable adjustments to policies, procedures or practices which exclude disabled people (for example exempting working dogs from a "no dogs policy" in a restaurant);
2. To provide auxiliary aids and services (such as providing information on a cassette or installing a portable induction loop) to make it easier to use a service; and
3. Where a physical feature is a barrier to providing a service, to find a reasonable alternative method of delivering the service (for example it might be reasonable for the owner of licensed premises to ensure any items or articles on display are at an accessible level for wheelchair users).

Obligations of Service Providers from 1 October 2004

Where there is a physical feature that makes it impossible or reasonably difficult for a disabled person to make use of a service, service providers will have to take reasonable steps to remove, alter or avoid it (for example by installing a permanent ramp to enable wheelchair users to gain access to premises previously reached only by steps) if the service cannot be provided by a reasonable alternative method.

Within the DDA, as with other acts of discrimination, there is a let out clause. This requires everybody to consider what is reasonable in relation to their profits, premises, and the services which they are providing.

When looking at reasonable adjustments it is important to look at the big picture which will depend on the circumstances of each case. What must be taken into account are the following:

- The resources of the service provider
- The costs of removing or making alterations;
- The effect the barrier is having on the service;
- The work the service provider has already undertaken

A service provider must look at ways around the barrier and the Act gives them four options:

- To provide the service by alternative means;
- To alter the barrier;
- To remove the barrier;
- To find ways round the barrier

For example, if we are considering premises that have three steps going up to the front door then this is a barrier to a disabled person and consideration should be given to remove the steps and put in a ramp. Look at the cost. If the provider can't afford it then it may be reasonable, for example, if there is a side entrance, for the wheelchair user to use that instead. If it is a listed building and the provider has made every effort to get permission to put in a ramp which is then refused, there is nothing the service provider can do.

The following are common questions to which we have tried to provide an answer.

1. *Question* Can a disabled person be given access to one floor only where the premises are on two floors?

Answer This is acceptable as long as the disabled person can gain access to all the facilities and they are treated no less favourably than anyone else.

2. *Question* What if the premises are a listed building?

Answer If this is the case, alterations may not be possible, for example replacing stairs with a ramp. If the premises are a listed building every effort must be made to try and get the permission to make alterations. If permission is ultimately refused nothing more can be done about this. The important point is that an attempt was made.

If it is simply impossible to provide a permanent form of access to disabled persons then a service provider should ensure that all staff are trained in disability awareness and any door supervisors are trained to carry disabled people upstairs.

There will be occasions when a disabled person may refuse to be manhandled in such a way but as long as the service provider can show that they have done everything possible and everything that is reasonable to ensure that a no less favourable service has been offered to that person then the Court is likely to look favourably upon that.

3. *Question* Only 80% of the premises is accessible to disabled people. Should it be 100%?

Answer As long as disabled people are treated no less favourably then it would be acceptable if only 80% of the building is accessible to a disabled person. Provided they could still receive exactly the same service, the fact that they can't reach every part of the building would not be unreasonable. The service must be to the same standard but it does not necessarily have to be exactly the same service.

4. *Question* Would operators have to lower part of their bar serveries to facilitate ordering by wheelchair bound disabled people?

Answer It is not necessarily reasonable in every case for the bar serveries to be lowered. In such an instance the operators would have to show that all their staff are trained and ensure that if a disabled person comes into the premises they are served efficiently and are treated no less favourably than an able bodied person. The service they receive must be equal. As long as the disabled person is not left unserved for any great length of time and their needs are looked after by a member of staff then it may be acceptable if the bar serveries is not lowered. However, in reality if the premises are extremely busy the staff may miss a disabled person who enters the premises and that disabled person may then receive less favourable treatment.

5. *Question* What about non-wheelchair bound disabled people?

Answer If a group of persons with learning disabilities were to enter the premises, then just because they did not fit the image of the premises they could not simply be asked to leave. If they were to be asked to leave then it must be proved that they were being excessively unruly, frightening to other people in the premises and aggressive. The service provider would have to establish this in Court to prove he/she had acted unreasonably.

Another situation could arise if a group of visually impaired people came into the premises with canes and dogs. They may knock into people or spill their drinks simply by making their



way to the bar. The staff must ensure that they are immediately offered an adequate service allowing them to be seated and be offered waiter/waitress service. It would not normally be reasonable for the provider to simply say he/she is too busy to provide such service in these circumstances.

Non Compliance with DDA

Sanctions for non compliance provide for an individual disabled person to sue in the County Court over the service being provided to them. However the Disability Rights Commission is very keen to point out that a little effort goes a long way. The biggest barrier to disabled people is normally people's attitude. Provided the staff have undergone disability and equality training they have made every effort to accommodate disabled people then this should suffice. They just have to be reasonable in their attitude.

The advice in this document should not be regarded as a definitive statement of the law – you are advised to seek your own legal advice. You can contact the Licensing Section by email at licensing@haringey.gov.uk .