

Leeds City Council

A Guide to the Disability Discrimination Act

Rights of Access to Goods, Facilities and Services

Disability Discrimination Act 1995
Rights of Access to Goods,
Facilities and Services

Introduction

This guide has been written to help businesses, voluntary organisations and Leeds City Council employees understand the section of the Disability Discrimination Act which deals with goods, facilities and services.

It is not a comprehensive legal guide and should not be treated as such. If in doubt about any of the areas covered, you are strongly advised to seek further advice.

You will see some examples of what can be done to comply with the Act in boxes. We cannot show all the different things that will need to be done, but we thought that some examples would be helpful.

Contents

Services covered and not covered

Unlawful discrimination

Reasonable adjustment

Auxiliary aids and services

Policies, procedures and practices

Physical features and alternative methods

Justifiable discrimination

What service providers need to take into account

Complainants rights and definition of disability

Services covered

Apart from education and some closely related services, and transport (which are covered by separate regulations) all services, whether provided free or for payment, are affected by this Act. This includes:

Businesses such as supermarkets, shops, market stalls, petrol stations, restaurants, pubs, hairdressing salons, solicitors, accountants, hotels, theatres, cinemas, banks, building societies and post offices.

Voluntary organisations from large charities to small community groups, whether they provide a service to disabled people or not.

All Leeds City Council services except for schools (see below)

Services not covered

Private clubs where membership is a condition of participation and there is genuine selection procedure. If the club hires out its facilities to the public, though, the Act applies to that service.

Manufacturers and designers of products if they do not provide services directly to the public

Education and some closely related services such as youth services provided by the local education authority,. However, if schools or other education buildings are used by members of the public for such things as parent teacher meetings, adult education sessions, music or sporting activities, then these services are covered by the Act. Disabled teachers and other staff are covered by the employment part of the Act.

Transport as it concerns buses, taxis, hire cars, trains, aircraft and ships However, services associated with them such as airports, stations, terminals, booking facilities and waiting rooms are covered.

Unlawful discrimination

A service provider must not treat a disabled person less favourably than they would treat others who are not disabled, or treat people with different impairments less favourably than other disabled people. Since 2 December 1996, it has been unlawful to:

Refuse to serve a disabled person. Refusing to serve a disabled person is unlawful whatever the intention or motive. Examples of this include:

A party of disabled children are refused entry to a zoo without explanation

Bar staff in a put pretend not to see a disabled person who is trying to be served at the bar

An assistant in a small shop refuses to serve a disabled person arguing that a nearby larger shop offers a better service to disabled people.

Provide a lower standard of service. A lower standard of service could include: speaking loudly, insulting someone because of their impairment, telling jokes about their impairment or asking unnecessary personal questions.

The manager of a fast food outlet tells a person with a facial disfigurement that he must sit at a table out of sight of other customers. This is likely to be against the law.

Provide a service on worse terms. Service providers cannot charge a disabled person more for the same service.

A travel agent believes, without good reason, that a disabled person is more likely to cancel her holiday and asks her for a larger deposit than other customers. This is likely to be unlawful

A partially sighted customer applies for a hire purchase loan. The finance company agrees to lend him the money on condition that his signature is witnessed by a solicitor. The company would not ask other borrowers to do this. This is likely to be against the law.

However, service providers may provide services on more favourable terms.

A theatre owner offers a better seat, without extra charge, to a blind person, because it allows space for her guide dog.

A leisure park allows free entry to a communicator-guide accompanying a deaf/blind person. This allows the deaf/blind person to enjoy the park more without having to pay two entrance fees.

Reasonable adjustment

A service provider discriminates against a disabled person if they fail to make a reasonable adjustment, and the failure makes it unreasonably difficult for a disabled person to use that service.

In determining what services are unreasonably difficult for disabled people to use, account should be taken of “whether the time, inconvenience, effort or discomfort entailed in using the service would be considered unreasonable by other people if they had to endure similar difficulties”.

From 1 October 1999 service providers may need to:

- provide an auxiliary aid
- alter a policy, procedure or practice
- provide an alternative means of providing the service

Duty to make a reasonable adjustment

Service providers have a duty to make reasonable adjustments to disabled people at large. It is an anticipatory duty, so you need to plan ahead.

The organiser of a public conference provides sign language interpreters. However, they would also need to take into account the needs of other disabled people, such as access into and around the conference or access to the platform.

The duty to make reasonable adjustments is a continuing and evolving duty. It should be kept under review and amended in the light of changing circumstances such as technological developments.

Making a service unreasonably difficult to use

It is also unlawful for a service provider to make a service unreasonably difficult to use.

A disabled person has arthritis and has difficulty standing. If the person is expected to queue, she would experience pain. Other customers would not be expected to suffer similar discomfort. Service providers would need to consider how the queuing policy could be adjusted to meet the needs of disabled people, such as a separate service desk or providing a ticketing system with seating.

Auxiliary aids and services

A service provider must take all reasonable steps to provide an auxiliary aid or service if this would enable or make it easier for disabled people to use the service. Auxiliary aids or services may include:

Improvements in communication. Providing information in a way which is more accessible for deaf and hearing impaired people or blind and partially sighted people.

A building society provides information about its savings accounts on audio tape for visually impaired people.

A gas company sends out its bills in alternative formats, such as Braille, large print, audio tape or computer disc, on request.

A small estate agent changes the print size of its written material, making it more accessible to partially sighted people. However, it decides not to provide information in Braille for blind customers because of the size of its business. Instead it puts the information onto audio tape when requested.

A social services department has a member of staff able to communicate with deaf clients using British Sign Language

A cinema offers customers a telephone booking service. Its booking office installs a textphone and trains its staff to use it. This offers access to deaf customers.

The booking office of a small heritage railway decides to communicate with passengers who have a speech or hearing impairment by exchanging written notes. This is likely to be a reasonable step to take. It would probably not be reasonable, however, for the booking office at a large main line station. Installing an induction loop and textphone may be more appropriate.

Providing equipment. This can often enable mobility impaired people to use a service more easily.

A large supermarket provides a specially designed shopping trolley which can be easily used by wheelchair users.

A private park provides additional seating around the grounds and an electric scooter for use by mobility impaired people.

The entrance to a community centre has two steps. It provides a temporary ramp to enable wheelchair users to gain access safely.

Extra assistance. Some disabled people may find it difficult to reach high shelving, understand labels on products or locate the items they are looking for. In these cases, additional help from the staff may be all that is required.

A small self-service pharmacist's shop has goods displayed on high shelving. On request, a member of staff will bring the goods to the cash desk.

A small hardware shop is located at the top of a flight of stairs with a narrow entrance. Staff service disabled customers by bringing goods to the building entrance.

A supermarket makes staff available to accompany disabled customers and help them with their shopping.

Because a restaurant changes its menu daily it is impractical for it to provide copies in Braille. Instead, its staff spend time reading through the menu for blind customers.

The staff at an electrical shop read through product details for customers with visual impairments.

Service providers must not assume that what one person needs will be the same as all others who have the same or similar impairment, you will need to consider the individual circumstances of each case.

Staff training

Staff training is an important factor in providing auxiliary aids or services. Staff should know:

- why some disabled people need to use auxiliary aids
- how to respond to such requests
- how to provide an auxiliary aid
- how to use an auxiliary aid.

Staff should also be encouraged to develop skills in communicating with disabled people, such as British Sign Language.

All auxiliary aids must be properly maintained and serviced.

Policies, procedures and practices

A policy is what a service provider intends to do. A procedure is how it plans to go about it. The practice is what a service provider actually does.

A service provider may need to change a policy, procedure or practice if it makes it impossible or unreasonably difficult for disabled people to use the service.

A DIY superstore has a policy of not allowing dogs onto its premises. This discriminates against guide and hearing dogs users. It amends the policy to allow disabled people accompanied by working dogs.

A video shop only allows people who can provide driving licenses as proof of identity to become members. This excludes disabled people whose impairment prevents them from driving such as blind people and those with epilepsy. It changes this policy to allow other forms of identification.

Other examples of adjustments to policies, procedures or practices are:

A Town Hall has procedures for evacuating the building in the event of a fire. In agreement with the local fire authority, it alters its procedures to enable visitors with mobility and sensory impairments to be evacuated safely.

An out-of-town shopping centre provides designated car parking spaces for “orange-badge” holders. However, in practice, non-disabled customers frequently use these spaces. It instructs its car park attendants, therefore, to ensure that they are only used by disabled customers.

An hotel has a number of rooms which are fully accessible to disabled guests. However, rooms are allocated on a first come first served basis which means that they are not always available when disabled guests try to book. The hotel changes its reservation policy so that they are only available to disabled guests, or are allocated last of all.

This is nothing in the Act to stop a service provider from going further by putting in place positive policies that encourage disabled people to use their services, such as concessionary rates for disabled people’s swimming lessons.

Physical features

The duty to remove or alter a physical feature, or to provide a reasonable means of avoiding a physical feature, will not come into force until 2004.

A physical feature includes:

- features arising from the design or construction of a building
- features on the approach to, access into and exit from the building
- fixtures, fittings, furnishings, furniture, equipment or materials.

However, service providers are advised to review their premises and identify what alterations need to be carried out to make sure they are accessible by 2004.

A public inquiry point is located on the third floor of a Government office building and is accessed by a flight of stairs. They will not be expected to alter their premises now. However, when these duties are introduced it might be reasonable to install a lift or move the inquiry point to the ground floor. It may be sensible to plan or make such changes now, especially if refurbishment is being planned.

Alternative methods.

Since the duty to alter the physical features of a building will not be implemented until 2004, service providers must take steps now to provide a reasonable alternative method of making those services available. For example, visiting people at home, providing a telephone service, allowing disabled people the use of a staff only entrance or ensuring staff are available to bring items from inaccessible parts of the building.

The public access to an art gallery is by a steep flight of steps. A side entrance for staff use only is fully accessible. The gallery decides to allow disabled people to use this entrance.

Justifiable discrimination

In limited circumstances the Act permits a service provider to justify less favourable treatment and the failure to make a reasonable adjustment. These are:

Health or safety

It may be necessary to treat a disabled person less favourably in order not to endanger the health and safety of any person, including the disabled person.

An amusement park operator refuses to allow a disabled person, who cannot stand unaided, onto a physically demanding high speed ride. The ride requires users to brace themselves using their legs.

However, false health and safety reasons provide no defence

A cinema owner turns a wheelchair user away on the grounds that she is a fire risk even though there are adequate means of escape.

Incapacity to contract

If a disabled person is unable to understand some of the terms and conditions, a service provider may refuse to enter into a contract with them

A person with senile dementia applies for a mortgage. The building society refuses the loan as it has sound reasons for believing that the person does not understand the legal agreement and obligations.

Unless there is clear evidence to the contrary, a service provider should assume that the disabled person is able to enter into any contract.

A jeweller refuses to sell a pair of earrings to a person with a learning disability claiming that she does not understand the nature of the transaction. This is even though her order is clear and she is able to pay for the earrings.

Otherwise unable to provide the service

A service provider can justify refusing a service where it would prevent them from providing it to other members of the public.

A tour-guide refuses to allow a person with a severe mobility impairment on a tour of an old city's walls because he has well founded reasons to believe that the extra help he would have to give her would prevent the tour party from completing the tour.

Before taking such action the service provider must first consider any reasonable adjustment which could be made.

The tour-guide in the previous example decides that an additional member of staff could be provided to assist the disabled person.

To enable the service to be provided.

Providing a service to a lower standard, in a worse manner or on worse terms may be justified if it is necessary in order to provide the service.

The bedrooms in a hotel that are suitable for wheelchair users, because they are on the level near to the lifts, tend to be noisier and have restricted views. The disabled person would otherwise be unable to use the hotel.

A service provider cannot justify treating a disabled person less favourably because of other people's preferences and prejudices.

A fitness centre restricts the times a customer with AIDS can use its facilities because other users have objected to his presence. This is on the groundless fear that they may become infected with HIV by normal contact with him.

Greater expense and additional cost of providing the service

Where a service is individually tailored to meet the needs of a disabled customer the service provider can charge more.

A furniture shop charges more for an orthopaedic bed, made to a disabled customers specification, than it does for a standard bed.

The Act does not allow a service provider to pass on the additional costs of making reasonable adjustments to disabled people. The cost cannot be used to justify any difference in the terms on which a service is provided to disabled people.

A guest house has installed an audio-visual fire alarm in one of its bedrooms to accommodate visitors with a sensory impairment. It cannot charge disabled guests more in order to recover the costs.

Protecting the fundamental nature of the service

A service provider does not have to make a reasonable adjustment which would so alter the nature of the business that it would effectively be providing a completely different service.

A night-club with low level lighting will not be required to adjust the lighting to accommodate partially sighted customers if it would fundamentally alter the atmosphere or ambience of the club.

What service providers need to take into account

The Act requires service providers to plan ahead to meet the needs of their disabled users.

The actions which service providers must follow are:

- informing all staff who deal with customers, clients or service users that it is unlawful to discriminate against disabled people
- establishing a positive policy on providing goods, facilities and services which makes sure disabled people are included and which is communicated to all staff
- training staff to understand the policy towards disabled people and their legal obligations
- monitoring the implementation and effectiveness of such a policy
- providing disability equality training for all staff who come into contact with the public
- addressing acts of disability discrimination by staff as part of disciplinary rules and procedures
- having a customer complaints procedure which is easy for disabled people to use
- consulting with disabled people (including disabled staff) about their experience as disabled customers
- regularly reviewing whether their goods, facilities and services are accessible to disabled people.

The extent to which it will be reasonable for a service provider to carry out these action points will depend upon its size and resources and the circumstances of the case.

Complainants' rights

The Act gives disabled people the right to have cases of discrimination heard in court.

Both the employer and the employee who work in a service could be help responsible for acts of discrimination. If the employer can show that they have taken all reasonable steps to ensure that their employees are aware of their responsibilities then, in some instances, they will not be responsible for the acts of their employees.

All cases will first be referred to the Alternative Dispute Resolution Group to see if an agreement can be reached before going to court.

The Act says that if a person knowingly helps someone do something unlawful, they will be treated as though they acted unlawfully too.

A person who makes a statement which they know is false or misleading is guilty of a criminal offence and will be liable for a fine of up to £5,000.

Definition of disability

In most cases there will be no doubt who is a disabled person. Disabled children as well as adults have protection under the Act.

A disabled person is someone who has a physical or mental impairment which is substantial, long term and affects normal day to day activities.

Physical or mental impairment includes: visual, hearing, learning disability, speech impairment, severe disfigurement and a clinically defined mental illness. This includes anyone who has an impairment which is likely to develop over time, such as cancer, multiple sclerosis and someone living with AIDS.

It must be substantial, which means that it is not trivial, and expected to last longer than twelve months.

Normal day to day activities include: bending, lifting, mobility, communication, long and short term memory loss.