



Social inclusion and the Disability Discrimination Act 1995

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1. INTRODUCTION

Social Inclusion has been defined by the Centre for Economic and Social Inclusion as

'the process by which efforts are made to ensure that everyone, regardless of their experiences and circumstances, can achieve their potential in life. To achieve inclusion, income and employment are necessary but not sufficient. An inclusive society is also characterised by a striving for reduced inequality, a balance between individuals' rights and duties and increased social cohesion.'¹

A fundamental aim of the Disability Discrimination Act 1995² would appear to be the promotion of the interrelated goals of economic and social inclusion for people with a disability. The Act imposes a basic general duty on employers and service providers not to treat a disabled person less favourably than any one else in terms of employment and access to goods and services. In seeking to attain equality between disabled and able-bodied persons in these areas, the Act also helps to facilitate greater economic and social inclusion for the disabled.

2. BACKGROUND

Part III of the Act deals with access to goods, facilities and services. Part III has been introduced progressively and service providers already have certain obligations not to exclude the disabled.

For example, it has been unlawful since December 1996 for service providers to discriminate against a disabled person in refusing to provide, or in deliberately not providing, a service which is given to other members of the public. It has also been unlawful to provide a service of a lower standard than, or on inferior terms to, that available to other members of the public. Furthermore, since October 1999 service providers have been required to take reasonable steps to change practices, policies or procedures that make it impossible or unreasonably difficult for those with disabilities to use a service.

3. NEW OBLIGATION

However, by 1 October 2004, service providers will additionally have to take reasonable steps to remove, alter or provide means of avoiding physical features on their premises that make it impossible or unreasonably difficult for a disabled person to make use of the service that they provide.

Failure, without justification, to make any reasonable adjust-

ments, alterations or improvements to premises to ensure that a disabled potential user is not at a disadvantage will amount to discrimination from 1 October 2004. Any such failure will enable a disabled person to bring a civil court action against the service provider for damages.

4. WHO ARE SERVICE PROVIDERS AND THE DISABLED FOR THE PURPOSES OF THE ACT?

A service provider is defined as any organisation or body (of any size and including its employees and agents) which provides services to the public or to a section of the public, including the provision of any goods or facilities, whether or not for payment. Local authorities and civil and municipal engineers are undoubtedly included within this definition.

A disabled person is defined by the Act as anyone with a physical or mental impairment which has a substantial or long-term effect on their ability to carry out normal day-to-day activities. The definition includes not only those who use a wheelchair or mobility aids but also, for example, someone with epilepsy, heart conditions, respiratory problems, learning difficulties or impaired sight, hearing and/or speech.

5. WHAT ACTION IS REQUIRED WITH RESPECT TO THE NEW PROVISIONS OF THE ACT?

The service provider has a duty, where a physical feature on its premises makes it impossible or unreasonably difficult for disabled persons to make use of the service, to take such steps as are reasonable in all the circumstances to either remove or alter the feature, provide a reasonable means of avoiding it or provide a reasonable alternative method of making the service available.

The Disability Rights Commission has published a Code of Practice that provides examples of what may constitute reasonable steps, changes or adjustments.³ Factors dictating what may be reasonable include the effectiveness and practicability of an adjustment, the likely level of related disruption and the amount of resources available to the service provider.

In most cases modest adjustments should suffice where a problematic physical feature is identified. It would be relatively simple, for instance, to widen a doorway, install handrails, provide a designated car parking area with dropped kerbs or use appropriate colour schemes within and on the approaches to premises if such adjustments were necessary. If it ever proves

impractical to make reasonable alterations, a service provider should investigate alternative ways of providing the service—for example, by using a different part of the premises for public access, arranging home visits or providing the service online. Expensive works should not normally be required.

It seems inevitable, however, that test cases will be brought after 1 October 2004. If court action is commenced, the service provider has a defence if it can demonstrate that reasonable steps have been taken or that any failure to take what would otherwise be deemed reasonable steps was justified. The scope for justifying discrimination under the Act is very narrow and is limited to such circumstances where the fundamental nature of the business or service would otherwise be threatened or the adjustments to the physical feature would endanger the health and safety of any person, including a disabled person. It may assist a service provider's defence if it can be shown that the Disability Rights Commission's Code of Practice has been followed.

6. ACCESS AUDITS

Service providers, in the run-up to 1 October 2004, would be well advised to arrange for access audits to be carried out by experienced and accredited auditors and to comply with the recommendations of any such audits. This provides a clear and defined starting point in order to ensure compliance with the Act. An early access audit would give a service provider time to both carry out and spread the cost of any alterations that prove necessary, as well as demonstrate, for the purposes of any court proceedings, that efforts have been made to comply with the Act.

Local authorities face obvious difficulties in this regard. It may prove impossible in the time available for a local authority to carry out access audits on its full portfolio of property and all of the highways and public rights of way for which it may be responsible. Notwithstanding the fact that all service providers must comply with the Act by 1 October 2004, it may be a question of initially prioritising the work involved and begin-

ning by auditing those buildings and highways that are most heavily used.

It is important to obtain cost proposals with recommendations arising from access audits. While there will be some significant cost items attached to most audits, it may transpire that a lot of work will require only minimum financial outlay and can therefore be carried out relatively quickly and easily. The advantage of also identifying those items which will be more expensive and time-consuming to remedy is that the service provider could attempt to argue under the Act that it would not be reasonable in all the circumstances for it to be expected to carry out such work. It should be remembered, however, that expectations will probably be dictated by the resources available to an organisation. No two buildings are the same and specific audits of this kind should ensure that a building achieves its potential for accessibility. Examples of some basic adjustments to get you thinking involve brighter lighting and tactile signs to assist the sight impaired, more user-friendly and appropriately located handles on taps and doors, easy access and correct-height furniture for those with arthritis, and appropriate systems in order to assist those with hearing disabilities.

Part III of the Act is undoubtedly significant as a social inclusion initiative. It is to be hoped that it will be embraced by service providers as an opportunity rather than an imposition and that the long-term benefits will outweigh any initial logistical difficulties. Part III is a step in the right direction in ensuring that everyone, not just the able-bodied, has equal access to a good quality of life.

REFERENCES

1. BRITTON L. and CASEBOURNE J. Working Brief 136, July 2002, *Centre for Economic & Social Inclusion.
2. Disability Discrimination Act 1995 (c 50) 1995 c. 50, ISBN 0105450952, *Crown Copyright 1995.
3. Code of Practice, ISBN 0117028606, *Disability Rights Commission 2002.

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