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PAPER AND DISCUSSION POINTS ON THE DISABILITY DISCRIMINATION ACT

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1 Present position

1.1 General

The Disability Discrimination Act (DDA) was passed in 1995 in order to end the discrimination many disabled people face. At the moment, it protects disabled people in fields of:

- employment
- access to goods, facilities and services
- the management, buying or renting of land or property
- education

The definition of disability under the DDA is in s1(1):[1] 'Subject to the provisions of Schedule 1, a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.'

The Schedule explains in detail some of the meanings of this section. The adverse effect is 'long-term' when it has lasted for 12 months, or is likely to last for more than 12 months or for the rest of the person's life. The 'normal day-to-day activities' must be affected, which is the case if at least one of the following areas is substantially affected:[2]

- mobility
- manual dexterity
- physical co-ordination
- continence

[1] All quotations under this section relate to the old version of the DDA unless otherwise stated.
[2] DDA 1995 Schedule 1 s4.

- ability to lift, carry or move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand
- understanding of the risk of physical danger.

When assessing the effect of the disability, medical treatment and other measures to correct it, shall not be taken into account except for glasses or contact lenses. Thus, short-sightedness would not fall within the meaning of 'disability' as long as it is correctable by spectacles or contact lenses. Conversely, a walking stick could not be taken into account and the restrained mobility would lead to the assumption of disability.[3]

Under the DDA 'disabled person' means, on the one hand, a person who has disability. Also included are persons having had a past disability.[4] The Disability Rights Commission[5] (DRC) estimates that about 8½ million disabled people live in the UK having an annual spending volume of £50 bn. Apart from the risk of a civil claim, and the attendant adverse publicity, there is therefore a strong business case for complying with the Act. The DDA aims to curb discrimination against disabled people in their access to the provision of services and employment, and to ensure that once they have obtained this access, they can enjoy the opportunities provided to the greatest extent reasonably possible. Under the Act, discrimination occurs in two possible ways. The first is where:

- a disabled person is treated less favourably than someone else;
- the treatment is for a reason relating to the person's disability;
- the treatment cannot be justified.

Discrimination also occurs where there is a failure to make a reasonable adjustment for a disabled person, and that failure cannot be justified.

For the purpose of limiting discrimination, the DDA imposes duties on persons in various fields where discrimination is likely to occur. Service providers and employers are the most important addressees of these obligations. Whether and when discrimination can be justified depends on all the circumstances of each case and is subject to more detailed rules in each field covered by the DDA.

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[3] Progressive diseases developing over time like cancer, multiple sclerosis, muscular dystrophy and HIV infection are deemed be a disability under the DDA from the moment the condition leads to an impairment which has some effect on ability to carry out normal day-to-day activities, even though not a substantial effect, if that impairment is likely eventually to have a substantial adverse effect on such ability.

[4] s2(1)

[5] In April 2000 the Government established the Disability rights Commission to police the compliance issues relating to the Disability Discrimination Act. The commission will assist disabled groups and individuals to take action against anyone who has a building which does not comply by the deadline (1 October 2004).

1.2 Service providers

1.2.1 Definitions

The Act deems a person 'a provider of services' being concerned with the provision of services to the public or to a section of the public.[6] The provision of services is a broadly drafted definition covering the bulk of services including the provision of any goods or facilities. Examples of services are:[7]

- access to and use of any place which members of the public are permitted to enter;
- access to and use of means of communication;
- access to and use of information services;
- accommodation in a hotel, boarding house or other similar establishment;
- facilities by way of banking or insurance or for grants, loans, credit or finance;
- facilities for entertainment, recreation or refreshment;
- facilities provided by employment agencies or under the Employment and Training Act 1973 s 2;
- the services of any profession or trade, or any local or other public authority.

It is irrelevant in this respect whether a service is provided on payment or without payment.[8]

The use of any means of transport is not covered, although transport buildings such as bus stations and airports are. The reason for the exemption is that the Government has produced regulations on access standards for trains. Similar regulations are planned for buses, coaches and taxis. Services available only to members of private clubs are not covered; however, where a club does provide a service to non-members, then the Act does apply to those services.

1.2.2. Existing duties under the DDA

The special feature of the DDA in respect of service providers is the three-step procedure by which the respective duties are gradually brought into force. The first two steps are already in force giving service providers duties under the DDA.

The first step relates to less favourable treatment. Since December 1996 it has been unlawful for service providers to discriminate against disabled persons by treating them less favourably than other people for a reason related to their disability.[9] Less favourable treatment means, for example, that the service provider (deliberately) refuses to provide to the disabled person any service which he provides to members of the public, or alters the standard of the particular

[6] s19(2)(b)
[7] s19(3)
[8] The DRC names swimming pools, churches, funfairs, dentists as examples.
[9] s19(1)

service or the manner in which he provides it to the detriment of the disabled person. It was, for example, held that it constitutes less favourable treatment when a person having impaired vision is refused entrance to a public café on the grounds that the accompanying guide dog does not fit into the café's policy of 'no dogs in the eating area' which allegedly extended to guide dogs.[10]

Less favourable treatment may be justified under the DDA s2(3) and (4) if in the opinion of the provider of services:

1 The treatment is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person); or

2 The disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment is reasonable in that case; or

3 The treatment is necessary because the provider of services would otherwise be unable to provide the service to members of the public: or

4 The difference in the terms on which the service is provided to the disabled person and those on which it is provided to other members of the public reflects the greater cost to the provider of services in providing the service to the disabled person.

In all circumstances it must be reasonable for the service provider to hold that opinion.

Step two is that from 1 October 1999 service providers have the positive duty to make reasonable adjustments to their practices, policies or procedures which concern the services they provide and which render it impossible or unreasonably difficult for disabled persons to make use of such services.[11] That means, provision of extra help or changes to the way service is provided is required of the service providers. The duty also covers adjustments to physical features having the same detrimental effect on disabled people when they try to gain access to the service. The second step obliges service providers to provide a reasonable alternative method of making the service in question available to disabled persons, but is does not require adjustments to the physical feature itself.[12]

The term 'physical feature' is (generously) defined by the Disability Discrimination (Services and Premises) Regulations 1999:

> … the following are to be treated as physical features (whether permanent or temporary)
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> - any feature arising from the design or construction of a building on the premises occupied by the provider of services;

[10] *Glover* v *Lawford* 4 Feb 2003 drc-gb.org
[11] s21(1)
[12] s21(2)(d)

- any feature on the premises occupied by the provider of services or any approach to exit from or access to such a building;

- any fixtures, fittings, furnishings, furniture, equipment or materials in or on the premises occupied by the provider of services;

- any fixtures, fittings, furnishings, furniture, equipment or materials:

(i) brought on to premises other than those occupied by the provider of services by or on behalf of the provider of services,

(ii) in the course of providing services to the public or to a section of the public,

(iii) for the purpose of providing such services;

- any other physical element or quality of any land comprised in the premises occupied by the provider of services.

In this context, the courts have already decided some cases with a different outcome. Ryanair, for example, was held to breach its obligation to provide a reasonable alternative method of providing its service of boarding its aeroplanes by not providing a wheelchair free of charge to a disabled customer[13]. On the other hand, a recent decision by Norwich County Court held it would not be reasonable for a train operator to bear the costs of a cab a disabled person has to use in order to get to the next accessible station[14].

Step three comes into force on 1 October 2004 and sets up additional (positive) duties for service providers. Any disabled person having been discriminated against may issue proceedings in the same way as any other claim in tort. The claim may include compensation for injury to feelings. Proceedings in England and Wales have to be brought in the County Court.

1.3 Employers

1.3.1 Duties

Employers employing more than 20 employees already face duties under the DDA, which came into force in December 1996. It is, first of all, unlawful for employers to discriminate against a disabled applicant and employee respectively by treating him less favourably in course of application and employment.[15] Besides, employers face twofold duties to make adjustments to the work environment under s6(1). Employers are requested, where any arrangements made by or on behalf of an employer,[16] or any physical feature of premises occupied by the employer, place the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as is reasonable, in all the circumstances of the case for him to have to take in order to prevent the arrangements or feature having that effect.

[13] *Ross* v *Ryanair Ltd and Stansted Airport Ltd* 30 Jan 2004 www.lawtel.co.uk
[14] *Roads* v *Central Trains* [April 2004] www.drc-gb.org
[15] s5(1)
[16] Wording as from 1 October 2004: 'Where a provision, criterion or practice applied by or on behalf of a relevant person'.

The interpretation of 'reasonable steps' in this context might give guidance in relation to the forthcoming changes to the DDA. The Act contains a non-exhaustive list of examples of steps a person may take in order to comply with its duty (e.g. making adjustments to premises, assigning the disabled person a different place of work and training). [17] In addition, it also lists a number of factors which may, in particular, have a bearing on whether it will be reasonable for the employer to have to make a particular adjustment:

- how effective adjustment is in preventing the disadvantage;
- how practical it is;
- the financial and other costs of the adjustment and the extent of any disruption caused;
- the extent of the employer's financial or other resources;
- the availability to the employer of financial or other assistance to help make the adjustment;
- the nature of his activities and the size of the undertaking.

Judgements in this connection deal for the most part with changes to the work environment but not with (active) adjustments to physical features themselves.[18] The (seemingly) few cases discussing the issue were mostly settled and are therefore not suitable authorities.[19] A disabled person claiming unjustified discrimination under the DDA can present its case to an industrial tribunal.[20]

2 Key changes coming into effect on 1 October 2004

2.1 Introduction

1 October 2004 is a landmark for disabled people since their rights are being enlarged by two major changes in legislation. On the one hand, as mentioned above, the last stage of the Disability Discrimination Act 1995 Pt III comes into force affecting providers of services. Furthermore, the Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations 2001 and the (revised) Code of Practice to Pt III[21] both accompanying Pt III come into force. Second, on the same date, the Disability Discrimination Act 1995 (Amendment) Regulations 2003 and the Disability Discrimination Act 1995 (Pensions) Regulations 2003 come into force, altering and enlarging the duties under further parts of the DDA.

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[17] s6(3) DDA old version, s 18B(2) new version
[18] Very useful list at www.drc-gb.org.
[19] A settlement was reached in a case where the employee's workstation was two floors up. It was common ground that the workplace could not be changed. The employee first pulled herself up two flights of stairs with someone following behind her in case she should fall. In February 2001, Access to Work assessed her as requiring a wheelchair and a stair lift. Access to Work agreed to pay £9,975 with the employer contributing £2,240. The employee brought an action when one year later the stairlift still had not been installed. Outcome: The case settled with the respondent agreeing to install a stairlift, purchase a power wheelchair and payment of £4,000 to the client. Source: www.drc-gb.org.
[20] s8
[21] NB The Code does not itself impose legal obligations and is not an authoritative statement of the law.

The construction industry is mainly and directly affected by the Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulation 2001 since this Regulation provides for an exemption for certain physical features which would otherwise need to be scrutinised to comply with the Act. For a period of ten years, a service provider in England and Wales need not remove or alter any aspect of a physical feature of a building that accords with the relevant objectives, design considerations and provisions in the Approved Document M of the Building Regulations.

Naturally, design professionals and design and build contractors need to be familiar with the legislation when contemplating user with their clients. Whether involved with new build or refurbishment. For developers and landlords[22] market rents of buildings may suffer if they do not comply. It is questionable as to what the demand will be for a building that needs substantial alteration before it can be used as a place of business. Service providers will be seeking to rent properties which already comply with the Act. Few will want to incur the additional costs of alterations. The inherent implication is that the value of some properties may be seriously and adversely impacted. If developing an action plan, are you designing for access or managing access? You must decide. Take as an example the emergency evacuation for disabled people. The choice of options is:

1 Building design – evacuation lift
2 Equipment – evacuation chairs
3 Management – physical assistance

For fire rescues, for example, there needs to be a management plan to evacuate disabled staff. This should constitute part of a risk assessment.

For DDA - compliant premises, the accessibility cycle is:

1 Establish policies procedures and access standards
2 Audit access standards
3 Prioritise and programme
4 Delegate and implement
5 Sign off building
6 Maintain and monitor
7 Feedback
8 Review standards and procedures

[22] The regulations concern access, mobility and site signage – and they apply to all service providers, ranging from large corporations to small businesses – not to the owners of the premises. It is important to note that the duty for making alterations rests on the service provider, not the property owner. Whether you are a tenant or owner of the freehold, if you are the one providing the service, you are also the one responsible for making the alterations. However, in practice businesses may be able to recoup much of the cost of complying with the Disability Discrimination Act (DDA) from their landlords by getting rent reductions. In three recent rent review arbitration cases it has been decided that the rent that the tenant would pay should be lowered to take into account the cost of the work needed to make the building DDA-compliant. The basis of these decisions was as follows: Landlords and tenants agree a property's rent at a review date, which usually takes place every five years. The new rent is agreed by comparing the rent that the tenant pays with a hypothetical comparable new vacant unit that is available on the market. However, because the new hypothetical vacant unit would need to be DDA-compliant the rent paid on the business' existing property should be lower to take into account the costs of making revisions to the old unit to bring it up to the standard of the new one.

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Key team participants in the accessibility cycle are facilities management, designers, building managers, human resources, marketing, and health & safety.

Chartered surveyors, many of whom have to address the issues for their own businesses, are in a prime position to assist employers, clients and service providers. Appropriately experienced chartered surveyors, particularly those with membership of the National Register of Access Consultants (NRAC), can advise on suitable adjustments to the physical environment. They can ensure that their clients are aware of their responsibilities under the DDA, that adjustments are realistic and cost-effective, and that both the service provider and the public benefit from accessible services.

2.2 Providers of service

2.2.1 Legislation

The third step is bringing s21(2)(a)–(c) into force requiring service providers to consider permanent physical adjustments to their premises. All construction professionals need to be familiar with the legal requirements. The key changes concern physical features making it impossible or unreasonably difficult for disabled persons to make use of such service. This means that building managers should already be arranging any alterations needed to improve access, to ensure that they are carried out in the most cost-effective way. Existing buildings are likely to need an access audit. In fact, it is possible that the Building Regulations will, in future, call for an access assessment on all construction projects. With this in mind, the Building Cost Information Service (BCIS) has published an Access audit price guide to help surveyors and other property advisers provide accurate cost advice where access needs to be improved. Service providers are required to provide for reasonable adjustments to physical barriers to access:

> Where a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all circumstances of the case, for him to have to take in order to
>
> (a) remove the feature
>
> (b) alter it so that it no longer has that effect
>
> (c) provide a reasonable means of avoiding the feature
>
> (d) [provide a reasonable alternative method of making the service in question available to disabled persons][23]

[23] Again, s21(2)(d) is already in force as from 1 October 1999

It is worth mentioning that there is no justification for failure to comply with the duty of making reasonable adjustments. The duty is only limited insofar as a provider of services is not required to take any steps which would fundamentally alter the nature of the service in question or the nature of his trade, profession or business.[24] Further, the service provider is not under duty to take any steps that would cause him to incur expenditure exceeding a prescribed maximum (s.21(7) DDA). The problem is that no 'prescribed maximum' has been settled yet.

2.2.2 Impact

As from 1 October 2004, every person involved in the provision of services inevitably needs to ask himself if he falls under the DDA. The three-step introduction of s1(1) and (2) originally aimed to avoid 'bad surprises' on the upcoming date by allowing service providers about nine years to review their services and premises from which these services are provided. Service providers should have ideally obtained 'access audits' and removed any obstructing features. Now, every service provider who has constantly ignored the new duties will have to pose himself the following questions:

1 Does the way I provide my services comply with the DDA provisions?

2 If not, what are the reasonable adjustments to physical features I have to carry out?

The new s1(2) DDA offers four alternative ways to tackle an obstructing physical feature. The service provider may remove or alter it, take reasonable means to avoid it or provide alternative methods which make the service available to disabled persons. According to the clear wording of s21(2) the service provider can choose between the four alternatives as long as the nature of his premises does not narrow his choice[25]. Normally, the provision of alternative methods of making the service available or the avoidance of the physical feature will be less cost-intensive like the removal or alteration of the feature, so the service provider might prefer these opportunities. In some circumstances, these alternatives are not possible. For example, if the service provider only operates from the second floor of a building without a lift and no home visits or alternative service can be provided it may be obliged as from 1 October to alter the stairway, i.e. to install a chair lift.

2.2.3 Exemption

There is, however, still good news for service providers to whom the Schedule of the Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulation 2001 applies. The overall effect of the Regulation is that, for a period of ten years, a service provider in England and Wales need not remove or alter any aspect of a physical feature of a building that accords with the relevant objectives, design considerations and provisions in the Approved Document M

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[24] s21(6)

[25] The focus of the DDA is 'on results'. However, the Code of Practice on Part III favours an 'Inclusive approach' maintaining that removal or alteration of physical features is the best way to comply with the DDA (5.38). 'It is in the interests of both service providers and disabled people to overcome physical features that prevent or limit disabled people from using the services that are offered. Although the Act does not place the different options for overcoming a physical feature in any form of hierarchy, it is recognised good practice for a service provider to consider first whether a physical feature which creates a barrier for disabled people can be removed or altered.'

of the Building Regulations[26]. At the date of publication of the Code (27 May 2002), the effective edition of the Approved Document M will be either the 1992 or 1999 edition. For building works where the building regulations applied, the effective edition will be the version which applied in meeting those building regulations. For building works where the building regulations did not apply the effective edition will be that which was in force when those works commenced. Any building works undertaken before 1 October 1994 will not be protected by the exemption.

2.2.4 Reasonable adjustments

In all other cases, the actual adjustment of buildings may meet several hindrances (costs, compliance with building regulations, planning permission, consent of other people and authorities, etc.). Therefore the key question for service providers is, to what extent the DDA obliges them to bear all the negative consequences. The statutory answer is that of 'reasonable adjustments'. The DDA does not yet specify what particular factors should be taken into account.

The Code of Practice to Pt III states that the requirements as to what is a reasonable step for a particular service provider depend on all the circumstances of the case (4.21 et seq.). It will vary according to the type of services being provided, the nature of the service provider and its size and resources, and the effect of the disability on the individual disabled person. According to the Code the following – non-exhaustive – list contains some factors which might be taken into account when considering what is reasonable:

- whether taking any particular steps would be effective in overcoming the difficulty that disabled people face in accessing the services in question;
- the extent to which it is practicable for the service provider to take the steps;
- the financial and other costs of making the adjustment;
- the extent of any disruption which taking the steps would cause;
- the extent of the service provider's financial and other resources;
- the amount of any resources already spent on making adjustments;
- the availability of financial or other assistance.

[26] With the advent of the new Part M of the Building Regulations (effective 01/05/04) the following advice is useful in clarifying what the current situation is in regard to providing access to any building.
Part M of the Building Regulations (2004) no longer refers to disabled access but instead refers to access for all. For example, a parent pushing a child's buggy will face nearly as many difficulties when trying to enter a building as a person in a wheelchair - as would an employee trying to wheel around a post cart or tea trolley! The aim of the new Part M is to foster a more inclusive approach to design and accommodate the needs of all people regardless of disability, age or gender.
The new Part M Regulation applies to ALL buildings over 30m², delivered after 1 May 2004, which will remain on site for 28 days or more. In effect, ramped access to principal entrance doors should be provided to all buildings, including Portakabin buildings, delivered after 1 May 2004. This applies regardless of any existing disabled access provision, intended use of buildings, whether you employ any disabled people or not. The only exemptions are for active members of the Emergency Services or Armed Forces, but not to their support or administration staff.

The Code emphasises that no hard and fast solutions will satisfy the requirement for reasonable steps. Service providers have to pay attention to the fact that action which may result in reasonable access to services being achieved for some disabled people, may not necessarily do so for others (e.g. provision of an interpreter for deaf students in a language school but no accessible classrooms for people disabled in their mobility). Equally, it is not enough for service providers to make some changes to access if they still leave their services impossible or unreasonably difficult for disabled people to use.[27]

Finally, the Code points out that the duty of making reasonable adjustments to a building does not stop once a service provider has decided to put a reasonable adjustment in place. It is also vital to draw its existence to the attention of disabled people. According to the Code this might be done by a simple sign or notice at the entrance to the service provider's premises or at a service point. Alternatively, the availability of a reasonable adjustment might be highlighted in forms or documents used by the service provider, such as publicity materials. In all cases, it is deemed important to use a means of communication that is itself accessible to disabled people.

In addition to the statements of the Code, the courts will contribute to the construction of s21(2) DDA. At the present time, there are seemingly no authorities available from the field of employment that could be used as a guidance for service providers. When having to decide whether a step is reasonable the courts will presumably cling to the Code of Practice. They might as well – as the Code suggests – consider the time that the service provider has had prior to that date to make preparations.[28]

2.3 Employers

The current exemption clause in s7(1) stating that employers employing less than 20 employees are not covered by the DDA is repealed. This puts 'small employers' under the same duties already explained above. There are also some minor editorial changes relating to the wording of certain sections.[29]

2.4 First-timers

1 October 2004 is also a landmark for various groups falling under the scope of the DDA for the first time. They are going to face similar obligations as do employers and service providers, including the obligation to make reasonable adjustments to physical features of the premises, which are to the disadvantage of disabled persons[30]:

- contract workers (s4B)
- office holders (s4C et seq.)

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[27] In fact, a recent Australian case, which may be a pointer for future UK case law in this area, highlights the need for prompt action - an individual successfully sued the Sydney Organising Committee for the Olympic Games for $20,000 (£11,989 at current exchange rates) for failing to make its web-based guide to the Sydney Olympics accessible to visually impaired people.
[28] Code of Practice 5.38
[29] e.g. s6(1)(a)
[30] All 'first-timers' are introduced by the Disability Discrimination Act 1995 (Amendment) Regulations 2003.

- partnerships (s6A et seq.)
- barristers in England and Wales (s7A et seq.)
- advocates in Scotland (s7C et seq.)
- trade organisations (s13 et seq.)
- qualifications bodies (s14A et seq.)
- providers of practical work experience (s14C et seq.)

The impact of the new DDA regulations on first-timers will for the most part equal the impact on service providers.

3 Outlook: Draft Discrimination Bill 2003

The Draft Discrimination Bill 2003 is subject to current discussions. It was published on 3 December 2003. The process is still in the pre-legislative stage so it cannot be predicted whether any of the planned changes will come into effect at all. In its existing format it would oblige (for example):

- locally electable public authorities
- certain private clubs

to make reasonable adjustments as well[31]. Even if this Bill becomes legislation, the major point at issue will be to determine which steps are reasonable. In this respect we can refer to the above mentioned.

4 Conclusion and words of advice

4.1 Access audit

So, whereas the field of employment is only subject to minor changes, service providers face a fairly different legal environment as from 1 October 2004. The statutory requirement to adjust physical features of buildings from which the services are provided, may lead to disadvantages in terms of costs of adjustments, and the time necessary to carry out the alterations. At the same time, a disabled-friendly environment may also bring advantages to a business due to an enlarged number of customers which can be expected.

It is material for service providers not having conducted an audit of their premises yet, to obtain expert advice on the current manner in which they run their services and to satisfy that their premises are ready for 1 October 2004. If, and that will often occur, there are still adjustments to be done, service providers have to assure themselves that all alterations they carry out fall within the criteria of the DDA.

[31] Cf s21B and s21E of the Bill and the illustrative version of the DDA and the DRCA as amended by the DDA (Amendment) Regulations, DDA (Pensions) Regulations and as it would be further amended by the Draft Disability Bill and cl.15

4.2 Extent of legal obligations

From a legal perspective there are certain possible pitfalls in the DDA, which need to be circumnavigated. First of all, a service provider encounters the fact that the DDA does not provide sufficient details to ensure him that his planned adjustments are in fact reasonable.[32] The service provider must rely on the factors in the Code of Practice, which still leaves him with a considerable amount of uncertainty. Given the aim of the DDA to protect disabled people against discrimination, a rule of thumb may be that the more adjustment the better. An even higher level of certainty can be achieved by applying the 'inclusive approach' of the Disability Rights Commission to the adjustments, i.e. to remove or alter obstructing physical features since this is deemed to be best practice.

It is interesting that Sarah Langton-Lockton, the Chief Executive of the Centre for Accessible Environments, considers the jury is out on whether a service provider 'will be obliged' to install say a lift. She thinks not. Given that the service provider's duty under the Act is to make its service accessible, it may be able to offer the service by a reasonable alternative means such as mail order, a home visit or a meeting in alternative premises, depending on the nature of the service. Also, since the DDA does not override other building legislation, it may not get Building Regulation approval or listed building consent for any proposed alterations. A stairlift may not be an option if it compromises means of escape. The service provider may be able to argue that provision of a conventional lift would reduce usable floor space and damage its business, which would not be reasonable. The cost might also be prohibitive given the resources of the business etc. The hypothetical service provider in question needs to have commissioned an access audit and to have used this to draw up a strategy. This might include a managed solution in the short term, i.e. bringing goods down to the ground floor pending the termination of the lease and a move to more accessible premises. All this to show that service providers have a number of options. If challenged, they need to be able to justify what they have done as reasonable and to have documented the decision-making process – the audit trail.

That said DDA, marks a number of milestones in the legislation:

- It recognises that discrimination towards disabled people does occur.
- It seeks to put an end to blatant or gratuitous discrimination and to unconscious discrimination made through ignorance.
- It allows for discrimination in favour of disabled people.
- It now provides disabled people with the right to challenge discriminatory behaviour and to seek redress if appropriate, either via conciliation or through the courts.

[32] This is obviously the key issue of the forthcoming new provisions. Even the DRC mentions as a future point as issue the question of the measures service providers should take from October 2004 to ensure that a physical feature is not making their service impossible or unreasonably difficult for disabled people to use.

4.3 Multi-tenant offices

Another problem likely to stay quite 'fashionable' is the well-discussed example of 'multi-tenant offices'. In cases of premises with more than one occupier and common areas such as entrance halls, stairways and lifts, the question arises whether or not the landlord is a service provider under the DDA. Is the landlord obliged to make reasonable adjustments to the common parts to make them accessible to disabled people?

Whereas the DDA is silent on this issue, the revised Code of Practice on Pt III allocates the problem to whether the common place is one 'permitting members of the public to enter'. If so, the landlord is deemed likely to be a provider of services, thus he is under duty to make reasonable adjustments to the common parts of the building. Assessing if a place permits members of the public to enter can be difficult, if the balance between clients and employees working in the building in question is unclear.

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