

Presentation

"Work with Disability"

by Louise Simmons, Chief Executive,
and Elaine Watson Birmingham
Disability Resource Centre

The Birmingham Disability Resource Centre (BDRC) was set up in 1992 to: -

"Support persons whose impairment or nature of their condition subjects them to physical, mental or sensory disability, by provision of a centre known as BDRC, through which persons with disabilities may realise their full potential as individuals and members of society"

In introducing this presentation, Louise said that she wanted to give an outline the **Disability Discrimination Act 1995 (DDA)** and to identify the key duties it placed on organisations. She then wanted to go on to discuss, with examples, what constitutes a significant term, **"reasonable adjustment"** in the Act and how to assess whether our organisations are working towards meeting the duties of the DDA. She added that the DDA had been enacted against a background whereby it had been unlawful since the 1970s to discriminate against anyone on the grounds of gender or race! The DDA was the first law that similarly prevented discrimination on the grounds of their disability but was, unfortunately, considerably weaker than the other legislation!

The two-fold purpose of the Act was: -

- To end discrimination experienced by disabled people.
- To ensure that people have an equal opportunity to partake in society and everyday life.

She went on to say that in order for this to happen, Society must remove the barriers that disabled people face in accessing Jobs, Education, Goods, Services and Facilities!

The DDA is laid out in the following manner: -

- Part I Disability
- Part II Employment
- Part III Access to Goods, Facilities and Services
- Part IV Education (2001)
- Part V Public Transport Vehicles
- Part VI Disability Rights Commission.
- Part VII Supplemental (Victimisation)

- Part VIII Miscellaneous

The Management, buying or Letting/Renting of land or property is also covered within parts II and III. As in so many laws, it is also crucial to define certain basic terms such as “Disability”, which is: -

“A physical or mental impairment, which has a substantial and long-term adverse effect on your ability to carry out normal day-to-day activities.”

The list now includes Cancer, HIV/Aids, progressive conditions, even at an early stage and conditions that are characterised by a number of cumulative effects such as pain or fatigue.

In the field of Employment, the DDA aims to stop discrimination against disabled people at work and, even, during the application stage, before they were employed! Since October 2004, **all** businesses were covered – ***Regardless of the number of employees!!*** The list of undertakings now covered Police, Fire-fighters and those who employ workers on board Ships and Aircraft. It ***Does NOT include – The Armed Forces.***

The Main Provisions are: -

- It is unlawful to treat a disabled person less favourably than a non-disabled without good reason
- Reasonable adjustments must be made to working conditions/workplace to enable or assist a disabled person to do a job.
- Discrimination is unlawful in all aspects of employment, including recruitment, promotion and training

Part III of the DDA deals with access to Goods, Facilities and Services offered by any organisation: -

- **Since December 1996**, it has been unlawful to treat any disabled people less favourably than other people for a reason related to their disability.
- **Since October 1999**, providers have had a duty to make reasonable adjustments for disabled people, such as providing extra help or making changes to the way they provide services.
- **Since October 2004**, they have had a duty to make reasonable adjustments to the physical features of their premises to overcome physical barriers to access.

Elaine Watson then took over the presentation to give an interpretation of a significant phrase in these new obligations, the term “Reasonable Adjustments”. She went on to say that there were not any clear definitions under the DDA, but that the **Disability Rights Commission (DRC)** have written Codes of Practice on each part of the Act giving guidelines and examples as to what may be considered to be “reasonable adjustment”. These Codes may be found on the DRC Website at www.drc.org.uk and examples draw a distinction between access a small Newsagent’s shop and a national Supermarket Chain, which has much more financial resource to carry out adjustments. The DDA should not be invoked blindly so that

the small Newsagent is put out of business! Small handrails, painting doorsteps a contrasting colour or installing 'Induction Hearing Loops' should not be extortionate for a small business.

Regarding the Employment field, blanket policies like asking employees to "Make complaints in Writing" could be made more "Disability-friendly" by allowing email communications"! Equally, Working Hours could have flexible break times built-in to allow diabetic sufferers to adopt a healthier refreshment schedule.

Elaine then went on to describe the use of an "Access Audit" to measure compliance with the DDA in the areas of the **Physical Environment, The Service Delivery and Communication Media (Including Websites!)**. She said that it should cover the following: -

Approach to Site

- Strategy for exiting building
- Paths
- Vehicle access controls
- Setting down points
- Parking
- Carriageway crossing
- External lighting
- Slopes
- Handrails and Guardrails
- Signage

Reception

- Strategy for exiting building
- Waiting
- Lighting
- Security
- Reception desk design
- Floor surfaces
- Signage

Entrances

- Strategy for exiting building
- Entrance doors and lobbies
- Handrails
- Shelter
- External steps
- Security
- Ramps
- Lighting
- Platform lifts
- Information/Signage

Lateral Circulation (Must cover every room in the building)

- Strategy for exiting the building
- Platform lifts
- Internal Doors
- Floor Surfaces
- Steps within one storey
- Information
- Ramps
- Lighting Signage

Evacuation

- Strategy for exiting building
- Alarms and Public Address
Be careful of the effect of flash frequency on sufferers of Epilepsy
- Horizontal Evacuation
- Vertical Evacuation

Services

- Strategy for exiting building
- Policies, Procedures and Practices
- Staff Training

- Lighting

Elaine went on to say that BDRC are often asked about listed buildings and she commented: -

- For service providers in listed buildings there is no block exemption. Many adjustments can be incorporated sympathetically.
- An access auditor can come in and give an idea of the changes that could be made. English Heritage can also provide guidance.
- It is important to remember that disabled people want to use services from listed buildings, just like everyone else and this is perfectly achievable with effort, advice and imagination.

A very significant, common theme throughout this audit process is the requirement to identify a clear Strategy for Exiting the Building. Underlying any strategy should be the practical standards laid out in the various parts of the Building Regulations 2000:

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- Approved Document B, Fire Safety
(Cross-refers to: -
British Standard BS 5588 Part 5, Code of Practice for fire fighting stairs and lifts AND
British Standard BS 5588 Part 5, Fire precautions in the design, construction and use of buildings, Code of Practice for means of escape for disabled people.
- Approved Document M, Access to and use of buildings. This can be downloaded free from www.odpm.gov.uk and contains physical standards for most aspects of access to buildings.

BS 5588 Part 8 says that *“It may not be necessary to incorporate special structural measures to aid means of escape for disabled people. **Management arrangements to provide assisted escape may be all that is necessary**”*. **Sections 13 – 16** give the following guidance on how this may be done: -

- Evacuation procedures should be pre- planned.
- Staff training and knowledge of the implementation are vital.
- Agreed procedures should be confirmed in writing and these should be practiced once or twice a year.
- A practice fire drill including disabled people should be carried out at least once a year (the fire brigade should be informed of this).
- Lessons from this procedure should be learnt and changes implemented.
- It suggests that extra training should be give to staff in buildings where the public are present.
- In buildings where an over-night stay in intended, people requiring assisted escape should be encouraged to make themselves known to management during check in procedures.
- In assembly buildings it is considered the number of disabled people requiring assistance will be small, however where a large group of disabled

people is present then the organisers should discuss the emergency evacuation arrangements with the management.

- Evacuation procedure for disabled people should start the minute the alarm is raised even in two stage evacuations.
- In phase 1 they can be moved to a refuge, however the document states that should a full escape be necessary they should be assisted to a place of safety.
- A refuge can also be used for disabled people to rest whilst making their escape and whilst waiting for help to move from the refuge to the final exit point.

The document suggests the use of vertical movement in certain circumstances. These are:

- Where there is a need to evacuate an area urgently.
- Where physical effort dictates the need for respite during the evacuation.
- Where there is obstruction to other occupants and it is necessary to leave the stairway for a short time.

Those organising the evacuation of the building should be aware of

- How many disabled people are in the building
- The nature of their disabilities
- The refuges and where they are located

The document goes on to give advice about the types of escape that should be provided and specifically mentions the following about the use of lifts: -

BS 5588 part 8 suggests that there are two types of lift that can be used for escape "Unlike a normal passenger lift it is essential that any **evacuation lift** can continue to operate safely when there is a fire in the building. Although it is not necessary to provide a lift for the escape of disabled people, a **fire fighting lift** (which is provided principally for the use of the fire service in fighting fires) may be used for the evacuation of disabled people prior to the arrival of the fire service, who will then assume responsibility of any remaining persons." The document says that if you have an **evacuation lift** then it should always be used.

In order to facilitate this:

- Liaison with the fire service is necessary.
- Operation of the lift should be controlled by **management** of the building.
- In work places, staff should be trained.
- The lift car should only be taken to appropriate levels.
- Only disabled people should use it.
- Senior staff should be designated to assist in the process.
- Anyone planning to use a fire fighting lift for evacuation purposes should inform their local fire service.

Elaine emphasised the point that it is a **management responsibility to evacuate disabled people** and that they **should never** leave them in a "refuge" to await rescue by the fire service. She reiterated that "Refuges" are **relatively** safe waiting areas for **short** periods! They are **not** areas where disabled people should be left alone

indefinitely until rescued by the fire brigade, or until the fire is extinguished. She commented that she knew of several examples where wheelchair users had been left on a stairwell landing to await collection by the fire service when they happened to arrive.

These principles should be incorporated into a document called a “*Personal Emergency Egress Plan (PEEP)*” and ideally: -

- A PEEP should be drawn up for every disabled person, or group of disabled people in the building
- Regular building users should be given a copy of their PEEP
- If the building is one with a large number of visitors, then simple emergency evacuation instructions should be handed to disabled visitors by the reception staff.

The following information should be in the PEEP: -

- Location – if there’s more than one building, a separate plan is needed for each.
- All staff should be aware of the procedures.
- Regular visitors should be made aware of procedures
- Identify specific types of assistance needed for disabled staff and visitors in case of emergency
- Describe the nature of the Emergency Alarm
- Provide specific procedures for assisting wheelchair users down stairs
- Identify the location of Evacuation chairs
- Define safe routes
- Identify Refuges and how to use them

Louise then dealt with Part IV of the Act, which is concerned with the Education Sector. Here again, providers must not treat a disabled person less favourably and have a duty to make reasonable adjustments including: -

- Changing admission/administrative & exam procedures
- Changing course content, including work placements
- Changing physical features and premises
- Changing teaching arrangements
- Providing additional teaching
- Providing communication and support services
- Offering information in alternative formats
- Training staff

The Special Educational Needs and disability Act 2001 (SENDA) amended the DDA to include Education Providers who are: -

- Schools
- Colleges
- Universities
- Providers of Adult Education
- Youth Services

The DDA Part V deals with transport, as follows: -

- All Public Transport to be fully accessible by 2020
- Buses and coaches operating to a published timetable between 2025-2017
- Hackney Carriages compliant by 2012, although some provisions are already in place for taxis
- Planes and Trains to comply by 2020

Some exclusions are:

- Small buses and coaches (with a capacity of up to 22 passengers)
- Vehicles used for holiday or touring day trips or Private hire to theme park, theatre etc.,

From December 2006, the DDA will be amended to place a duty on all public bodies to promote disability equality. This will affect all public bodies – from local councils to government departments, from universities to hospitals. This **Disability Equality Duty** will require the public sector to actively promote disability equality and is similar to the duty to promote racial equality under the Race Relations (Amendment) Act. This is a positive duty that builds in equality at the beginning of all processes, rather than making adjustments at the end. It will bring about a shift from a legal framework that relies on individual, disabled people complaining about discrimination, to one in which the public sector becomes a proactive agent of change.

They will have to consider the elimination of harassment of disabled people, promotion of positive attitudes and the need to encourage disabled people to participate in public life. The Regulations will give key public bodies a specific duty which will define a framework to use, amongst other things, to produce a **Disability Equality Scheme**,

Louise concluded by saying that in 2006 BDRC would be offering basic, 1-day training courses, Bespoke Equality Training, Access audits and Business consultancy and One-to-One Advice Services. Contacts on 0121 789 7563, Email: bdrc@disability.co.uk

Members' Questions

Mark Hoare of Birmingham University asked who was responsible for enforcing the DDA. Elaine replied that complaints had to be made to the Disability Rights Commission, who then tried to obtain remedial action by the person contravening the Act. If this was not achieved, the DRC then applied to the courts for an order. Continued contravention would then, ultimately result in a fine. It appears as though the process is not as straightforward as criminal prosecution under the Health and Safety laws.

Mark went on to ask if there could ever be any reasons for NOT employing a disabled person. Elaine replied that the Health and Safety at Work Act took priority over the DDA, but that this course of action should not be taken lightly.

Dennis Walley of Homeserve described the pre-employment screening for epilepsy in some jobs and the use of high desks and chairs in call-centres. If this process was to be improved by telling colleagues about the PEEPs for disabled persons, did it introduce a conflict with medical confidentiality, as some doctors implied? Elaine agreed that this could be difficult because some registered disabled people want to keep it a secret. It was better to use a ‘generalised’ approach with built-in PEEPs that covered all employees’ needs. Louise added that it might be advisable to seek consent for disclosure on a restricted ‘need-to-know’ basis. **Morris Cooke** commented that he was not surprised that some doctors were apprehensive because they could probably see difficulties in expressing a medical opinion about a person’s fitness for work. Louise mentioned in passing that disabled persons, on average, have less uncertified sick leave than other workers.

Mike McDarby of Bournville College raised the issue of the duty of care to wheelchair users in emergencies and indicated that it was difficult to arrange for other staff to assist with evacuations. Was it acceptable to take the wheelchair user to a safe refuge and await the arrival of the fire service? Elaine repeated her earlier advice that it was the primary responsibility of the employer to effect and evacuation to a safe place and that this should never be delayed until the arrival of the fire brigade! This sparked off a very vigorous debate, covering issues such as protecting the backs of ‘carers’ and the refusal of disabled people to use an Evacuation Chair.

The Secretary commented that, in addition to training staff to use Evacuation Chairs, it was vital to give familiarisation training to the disabled person as well, in order to prevent a ‘refusal’! He went on to say that it was vital to adopt a robust evacuation procedure that could ensure that there was always a trained person to assist with evacuation, even when the nominated person was on holiday, or sick, or even temporarily working in another part of the building when the alarm sounded!

Jim Hathaway of Beiersdorf asked if he had to make provision for disabled persons during an office refurbishment, even if there was no real prospect of employing a disabled person in the near future. He made the additional point that if he ever appointed a disabled person, then reasonable adjustments could easily be made and probably in place before the person was in post! Elaine explained that the DDA expected employers to anticipate the adjustment, nevertheless.

Secretary’s note: Given that most provisions of reasonable adjustments are, like ergonomic assessments, only possible to do effectively for the specific individual concerned, it is reasonable to argue in favour of a delay in making any provision until after recruitment. In any case, as enforcement is most likely to be by means of a County Court order, following a complaint by a disabled person, the DDA will not have the immediacy of Health and Safety Law and will enable employers to respond ‘when the need arises’! The ‘well-intentioned’ employer, of course,

should have had plenty of time to act well before any ‘employee concerns’ reached the ‘complaints’ stage, or indeed when court action is threatened! It may be, of course, that a random local authority inspection may trigger an action but, even then, the process pursues a slow path of ‘remedial action’ in preference to precipitate court action.

Dick Monk, retired member, asked if the DDA applied to churches and Elaine replied that it did indeed because it came under Part III, Access to Services!

Dave Sparrow of Sapcotes asked if the DDA applied to employees with temporary disability and Elaine replied that it was for permanently disabled persons, only.

Dennis Walley asked if there was a high staff turnover that resulted in disabled persons applying for jobs at short notice, could anything be done about overcoming the ensuing difficulties? Louise suggested that job applications should ask if candidates had any special needs, so that there was more opportunity to respond positively with adjustments.

Peter Jones asked if there was a duty laid on employers to appoint a specific proportion of disabled persons. His concern was that, if the proportion was too high, it might cause a significant problem during emergency evacuations. Elaine answered that this was a situation where a Fire Risk Assessment should be made and the recruitment policy set accordingly. She was not aware of any legal quota being specified.

Chris Peck of the University of Central England described a situation where staff and students moved locations frequently so that it was difficult to ensure adequate support for assisted evacuations. He requested advice on how to attract volunteers for such a job. Elaine and Louise agreed that it was a difficult problem but and referred Chris back to earlier advice when he suggested the use of refuges.

Mike McDarby raised the issue of his college which had a policy of taking in a high proportion of disabled persons and commented that it compromised evacuations Mark Hoare commented that Birmingham University placed a dedicated box on application forms to spotlight disabled persons so that Disability Officers could assess each case individually. Elaine commented that early consultation was vital.

As there were no more questions the Chairman, Warwick Adams closed the meeting and asked the members to show their appreciation to the speakers for their thought-provoking presentation.