

ARHM GOOD PRACTICE NOTE

DISABILITY AND RESIDENTIAL PREMISES

Definition

The Equalities Act 2010 (The Act) protects people from discrimination and harassment based on 'protected characteristics'.

Disability is a protected characteristic, and is defined as a physical or mental impairment which has a long term (more than 12 months) and substantial adverse effect on a person's ability to carry out normal day-to-day activities. Physical or mental impairment includes sensory impairments such as those affecting sight or hearing.

'Hidden' impairments are also covered (for example, mental illness or mental health problems, diabetes and epilepsy) where they meet the definition in the Act.

Cancer, HIV infection and multiple sclerosis are deemed disabilities under the Act from the point of diagnosis. In some circumstances, people who have a sight impairment are automatically treated under the Act as being disabled.

Progressive conditions and those with fluctuating and recurring effects will amount to disabilities in certain circumstances.

Discrimination

Disability discrimination is when a person is treated less favourably or put at a disadvantage for a reason that relates to their disability.

The treatment could be a one-off action, the application of a rule or policy or the existence of physical or communication barriers which make accessing something difficult or impossible.

The discrimination does not have to be intentional to be unlawful.

Employers' liability

Managers have a legal liability for their employee's actions. It is not a defence to show an employee discriminated without the employer's knowledge.

Managers should have Policies, Procedures and Processes in place for their employees to follow to ensure that discrimination does not occur.

In addition, all relevant Policies should have reference to the Equality Act 2010 along with an impact assessment to ensure discrimination does not occur as a result of the policy, whether it be directly or indirectly.

Reasonable Adjustments

Managers have a duty to make reasonable adjustments to premises to assist disabled persons if requested.

This duty is in three parts: adjustments to policies, procedures and practices; changes to terms of lettings; and the provision of auxiliary aids.

Where a lease entitles a leaseholder to make improvements or alterations with the landlord's consent, the landlord cannot unreasonably withhold consent if a leaseholder wants to make a disability related adaptation to their property.

Even where a lease contains an absolute prohibition against alterations a disabled leaseholder may still request a change to the terms of the lease.

If a term in a lease makes it unreasonably difficult or impossible for a disabled person to enjoy the property or the benefits and facilities in a block, a duty to adjust the term may arise. This might include waiving a 'no pets' restriction to allow for the keeping of an assistance dog, or waiving of 'no drying of clothes on balcony' for a leaseholder with restricted mobility.

It is an express duty within the Act to take steps to change a term which prohibits the making of alterations or improvement within a property where the alterations are required due to disability.

Where consent is found to be unreasonably withheld under the terms of the Act, then that consent is automatically and immediately deemed as given.

An auxiliary aid or service is anything which provides additional support or assistance to a disabled person. Examples include:

- Replacement or provision of signs and notices.
- Replacement or provision of door bells or door entry systems.
- Provision of audio-visual fire alarms

Registered Providers

Registered Providers are under a public sector equality duty. (Part11 Equality Act 2010) and should follow the Disability Equality Duty for Housing Providers Code of Practice from the Equalities and Human Rights Commission.

Reasonable Steps

The Act states that managers should take "reasonable steps" to make reasonable adjustments on request.

A number of factors which might be taken into account when considering what is reasonable include:

- The nature of the letting. A request from a person with an assured shorthold six month tenancy could be treated differently than a 99 year lease.

- The effect of the disability on the individual person.
- The effectiveness of the proposed step.
- The extent to which it is practicable to take the steps. The installation of a walk-in shower may not be practicable if there is not enough depth in the floor for the plumbing required.
- The financial and other costs of making the adjustment.
- The impact on the safety of the building
- The impact of Building Regulations and other consents
- The extent of any disruption and the effect on other lessees.
- The extent of the landlord or manager's financial and other resources and availability of other sources of assistance.
- The amount of resources already spent on making adjustments.
- The impact on the value of the property

The Act allows for the justification of health and safety to be grounds for the refusal to carry out a reasonable adjustment. The health and safety can be that of the disabled person or of any other occupiers of a block.

However, a landlord or manager using this reason must be able to show objective evidence to support it. A blanket policy to refuse storage of mobility scooters in common areas or to ban stairlifts should have properly researched evidence and a risk assessment.

A landlord can attach reasonable conditions to any consent and most will do so. However, if the conditions are unreasonable then once again consent can be deemed to be given. Some examples of possible conditions that can be attached to alterations and improvements include:

- Requirement to obtain necessary consents e.g. building regulations.
- Requirement for pre or post inspection by landlord
- Carry out works in accordance with agreed plans and specification.
- Payment of landlord's costs of consent.
- Requirement for leaseholder to pay for any ongoing maintenance.
- Requirement for re-instatement but not if the improvement would increase the value of the property.

Alterations to Common Parts

The Act does not apply to physical alterations to common parts of schemes. However, the ARHM Code requires that Managers should consider in a reasonable manner requests for alterations to common parts which would assist disabled persons, particularly where the relevant leaseholder is willing to pay for the alteration, ongoing maintenance and reinstatement, if that is a requirement for consent.

Consultation with other lessees about any proposed alteration requested should be carried out.

If, after consultation, it is decided to proceed, the manager should arrange for a draft contract between the manager and the relevant leaseholder to be drawn. This should include liability for payment of works, ongoing maintenance costs and reinstatement, and any fees which the manager proposes to charge for dealing with the proposed alteration. The contract is subject to agreement with the relevant leaseholder or a nominated representative.

Payment

The legislation and guidance remain unclear on who should pay for reasonable adjustments.

Where a leaseholder asks for an improvement or alteration within their own property, then that leaseholder should pay or seek grants. Managers should offer advice about grants.

Requests for reasonable adjustments to auxiliary aids and services, and changing terms of leases are not payable by the disabled person or the lessee in whose property the disabled person lives.

Some adjustments may be available for supply by local authority social services, or through charities or other sources. The Landlord or manager should encourage further investigation.

A lease that contains a clause that the landlord can recover all other costs of management may be interpreted as covering the costs of such reasonable adjustments.

If leases contain a clause that the landlord can charge the cost of any statutory requirements then this may cover the costs of compliance with the requirements of The Act.

For more expensive items, guidance suggests that the financial resources of the landlord are a relevant factor in considering reasonableness. A Resident Management Company which has taken advice that an adjustment cannot be recovered under the terms of the leases might reasonably refuse if it has no other funds. A large landlord or agent with thousands of properties in management may have to take another view.

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