

THE DISABILITY DISCRIMINATION ACT

By David Phillips MBE FTS*

The 1995 Disability Discrimination Act has had a considerable impact on the UK tourism industry, creating greater awareness of the benefits of welcoming disabled customers, as well as highlighting potential areas of discrimination in employment and the provision of services. This paper revisits some of the issues, assesses the current situation and, in particular, looks at the implications for the industry of 2004, when consideration will need to be given to the adaptation of premises.

Background

While the advent of the 1995 Disability Discrimination Act (DDA) may have been instrumental in focusing the attention of commercial tourism businesses, in particular, on issues surrounding disabled customers, the subject had been considered for a good deal longer by public sector tourism bodies. In the late 1970s, the English Tourist Board produced a joint paper with the Trades Union Congress, *Holidays – The Social Need*, which outlined the reasons for the comparative non-participation by disabled people in mainstream tourism. The apparent lack of information about suitable facilities led directly to the creation of the charity Holiday Care in 1981.

The ETB research study, *Disabled People and Holidays 1982*, was followed by the seminal report, *Tourism for All* (TFA), in 1989, which made over 60 recommendations to the industry to improve the welcome offered to disabled customers. This report was a milestone in the move away from the culture of dependency and segregation, which had characterised holiday taking by disabled people in earlier decades. The TFA report articulated how the industry should respond to meet the increasing desire amongst disabled people for independent holidays in an integrated mainstream environment.

The introduction in 1993 of a harmonised National Accessible Scheme for the inspection of tourist accommodation by the tourist boards and Holiday Care met with limited success, owing to its voluntary nature. Nonetheless, it has helped disabled people identify suitable establishments, as well as creating an enhanced knowledge base on access matters amongst proprietors. Latterly, the Government's 1999 Tourism Strategy, *Tomorrow's Tourism*, has emphasised their commitment to accessible tourism, although it has to be said that little, if any, extra money has been made available to the English Tourism Council for implementation purposes.

The introduction of the DDA needs to be viewed against this background, for commercial tourism companies tend to pay little heed to the blandishments of Government and the tourist boards, particularly where what are considered as 'soft' issues are concerned, unless there is some financial inducement to do so. Other industry sectors have undoubtedly held similar views.

It is this perceived lack of positive action in society generally, with regard to creating a more accessible environment for disabled people, that in no small measure led to the creation of the Disability Discrimination Act.

Numbers of disabled people

Current estimates suggest that there are over nine million disabled people in the UK, some 15% of the population – or, to put it another way, more than the combined populations of Scotland and Wales. This figure includes 6.5 million people of working age who have a current long-term disability or health problem; 8.7 million people who are deaf or hard of hearing; an estimated 1.8 million blind or partially-sighted people; 18,000 people who are regular Braille users; and 400,000 people who have a learning disability.

Given that for many in the tourism and hospitality world disabled people means wheelchair users, it's worth pointing out that the Disability Rights Commission (DRC) estimates that wheelchair users, in fact, represent less than five per cent of disabled people (about 450,000). The industry should also be aware that disability includes facial disfigurement, those who have allergies and the estimated one in seven people who have a mental health problem each year.

What this means in practice is that disabled people do not represent a homogenous, niche market. Rather, that people with disabilities are spread across all markets and form part of the customer base of all tourism businesses, whether operators are aware of it or not.

Why cater for disabled customers

In one sense, the tourism and hospitality sectors are already catering for customers with a wide variety of disabilities but they often do this unwittingly, given the fact that many disabilities are not immediately obvious. So there is a basic customer care issue here in relation to the standard of service they are providing. More specifically, there are three main reasons why businesses should consider making their operations accessible to disabled people:

1. Corporate citizenship

The first reason is what could be termed good corporate citizenship or corporate responsibility. There is an argument that as one of the UK's major industries, tourism and hospitality should be giving a lead in creating a more inclusive society and in helping to combat prejudice. Some hotel companies, for example, are more enlightened than others in this respect, often because a senior figure has an emotional commitment resulting from first-hand experience of disability amongst family or friends. But good citizenship doesn't have to be born purely of altruism; there are substantial PR benefits to be gained from presenting a caring corporate image as companies, such as Tesco and B&Q, can testify.

2. Good business

Much has been made over the last decade, in particular, of the commercial case for welcoming disabled customers. Research undertaken by the Joint Disability Charities Research Group in 1999 showed that some 75% of disabled respondents believed a holiday to be important and 66% had actually been away the previous year. Earlier in 1993, the management consultants Deloitte Touche published a study, *Profiting from Opportunities*, which identified a potential additional spend of nearly £17,000 million from disabled people in Europe if suitable facilities were provided and if they were marketed consistently. More recently, ETC research has suggested that there are 2.7 million disabled people in England alone with a propensity to holiday in the UK.

But catering for disabled people isn't just about numbers. Operators should be aware that very often disabled people travel with friends and family, so there is a pronounced visitor multiplier effect in accommodating them; they are more likely to book holidays of at least a week, rather than short breaks; they tend to book early; and they are a valuable source of repeat business when they find the right facilities. On the business travel front, it should also be borne in mind that increasingly conference organisers will not book venues unless they are accessible.

Yet, despite these arguments, there is still a marked reluctance in certain quarters of the industry to welcome business from disabled people. Part of this stems from the belief that the cost of creating accessible facilities more than outweighs the commercial benefits; but in addition to this there is strong anecdotal evidence of a fear factor at play – the fear of displacement in that too many disabled customers will put off existing core business.

The first of these perceptions is based on the erroneous assumption that accessibility is solely to do with accommodating wheelchairs; the second is potentially more perturbing in that it often says more about an operator's own prejudices than that of his or her customers. But there is evidence already that younger people – both existing and future customers – who are more comfortable with issues such as race and disability, will increasingly withdraw their business from service providers who do not share their sense of social responsibility. Whatever, a concerted effort by the industry to create a critical mass of accessible tourist facilities will ensure that there is no danger of 'disability honeypots' of the kind certain operators fear. In this respect, trade bodies and associations have an important role to play, as both leaders and advocates.

3. The law

If the desire to be good corporate citizens and the business case are insufficient motivation for operators to create more accessible facilities, there is now a major imperative in the shape of the Disability Discrimination Act. The effect this has already had on the tourism industry and the implications of the 2004 phase relating to the adaptation of premises are considered in the remainder of this paper. The

problem with legislation, however, is that it engages people's minds but not their hearts. The attitude is often 'What's the least I can do to comply with the law's requirements'.

The current situation

Since the implementation of the DDA in early 1996, it is clear that many tourism and hospitality businesses have begun to take positive steps to meet their obligations. So far, where the provision of goods and services is concerned, these relate to not discriminating against disabled people for reasons to do with their disability and, where reasonable, finding ways of offering services by alternative means, if physical features make access difficult. On the work front, organisations which currently employ 15 or more staff must not discriminate against disabled people in terms of both recruitment practice or employment conditions.

Many large tourism companies, such as hotel groups and attraction operators, have legal teams to advise them on their responsibilities, and the national and regional tourist boards have done their best to ensure smaller grass roots organisations are aware of the DDA and its implications. Indeed, the ETC and English RTBs have trained in excess of 4,000 individuals through their disability awareness and equality module, 'Welcome All'.

So, progress is being made but the news is not all good. A survey of small tourism businesses in London a couple of years ago showed that at the time 70% were not aware of the DDA: in 2000-01, an Audit Commission survey revealed that only a quarter of council buildings in England were accessible to disabled people. In the summer of 2002 publicity was given to a number of cases of potential discrimination, which have been resolved by the Disability Conciliation Service run in conjunction with the Disability Rights Commission (tel: 08457 622633). One or two examples illustrate how the Act is impacting on the industry.

Policy amendments following conciliation

Six Continent Hotels have introduced a policy which allows free use of an available second bedroom when disabled guests and their carers or assistants require separate beds. This followed on from an incident at an Express by Holiday Inn when a disability consultant was told he would have to pay for two rooms because there were no twin rooms.

Recently, a customer with a hearing impairment cancelled a short break at a hotel because no TVs with teletext were available. Following arbitration, the hotel has agreed to install six such TVs and the customer has been offered a 50% discount on a future booking.

The implications of 2004 for the tourism and hospitality industry

From 1 October 2004, tourism providers of all kinds may have to make 'reasonable adjustments' to the physical features of their premises to overcome barriers to access. It is this part of the Act that has caused most concern in the industry. While the Act is not saying that all premises will, for example, have to be wheelchair accessible as a matter of course, it does require all providers of goods and services to think about the access problems peculiar to their own establishments. As a result, many tourism operators are planning improvements to their premises ahead of 2004 through routine maintenance and refurbishment programmes.

The Act specifies that, from 2004, where a physical feature makes access to a service by a disabled person impossible or unreasonably difficult, then the service provider, where reasonable, will have to take steps to remove the feature, alter it so that it no longer denies access, provide a reasonable means of avoiding the feature or provide a reasonable alternative means of making the service available. (This latter requirement has been in force since October 1999.) In this context, the Act includes under physical features anything arising from a building's design or construction, access and egress points, fixtures, fittings, furnishings, equipment and materials – whether permanent or temporary.

Faced with this somewhat intimidating definition, it is not surprising that many smaller operators, in particular, are concerned that the potential cost of adaptations could put them out of business. Clearly, however, such an outcome would be beyond the bounds of 'reasonableness'. The costs of making adjustments, the availability of financial assistance, the extent of the provider's financial means, the

practicability of taking measures and the amount of disruption caused by taking the measures are all relevant to whether changes would be reasonable.

The DDA does not place the options for overcoming a physical feature in any form of hierarchy. However, removing or altering barriers to access created by physical features will be preferable from the perspective of disabled people's dignity and may help the operator avoid the ongoing costs of providing a service by alternative means.

While many in the industry would welcome a document which stated specifically and unequivocally what sectors such as hotels, B&Bs, self-catering establishments, historic properties, theme parks etc should do to meet the requirements of the DDA, particularly in relation to 2004, such blanket guidance is not feasible in relation to what is, essentially, not a compliance-based piece of legislation. The situation for each service provider has to be assessed according to the particular circumstances surrounding his or her operation.

Conclusion

In light of the above analysis, it is sensible for all tourism operators to take advice about their duties to make adjustments to physical features and this is better done now rather than in 2004. Ideally, this should be in the form of an access audit of their premises by an experienced auditor. The audit should include an access implementation plan, tailored to the specific circumstances of the operator. Local authority access officers and local access groups are also a valuable source of advice, as is the Disability Rights Commission which has published a number of useful publications. A new 'Disability Discrimination Act Code of Practice – Rights of Access: Goods, Facilities, Services and Premises' is particularly helpful in relation to the implications of 2004.

Doing nothing is quite simply not an option. The best approach is a holistic one which addresses policies, procedures and practices which may be discriminatory; the implementation of disability equality and awareness training; advice on marketing to disabled people (both content and formats); and finally, as the DDA requires from 2004, an assessment of reasonable and cost-effective adaptations to the accessibility of premises. In an attractions context this should include as far as possible the features as well as the facilities.

In summary, the implication of the DDA for the tourism and hospitality industry is action – but not necessarily major expense. The result will be an environment which is accessible to more customers, with concomitant benefits to the bottom line.

USEFUL RESOURCES IN RESPECT OF DDA LEGISLATION

The following guides and online resources have recently been published for use by event venues, destinations and organisers wishing to ensure they are compliant with the Disability Discrimination Act:

1. 'Organising Accessible Events', a 64-page guide available free from the Disability Rights Commission via the DRC Helpline on (tel) 08457 622 633 or accessible from their website at: www.drc-gb.org
2. 'Make Your Conference Accessible', published by the Centre for Accessible Environments and downloadable from: www.cae.org.uk/pdf/venues/index.html. This is a series of checklists.
3. 'Accessible Solutions Manual', from Tourism for All: www.tourismforall.org.uk
4. The Royal National Institute for the Blind produces an excellent pack of information costing £20.