

The Equality Act 2010 and its Effect on Heritage Open Days

Introduction

The Equality Act came into force on 1 October 2010. It brings together over 116 separate pieces of legislation into one single Act. The new Act provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. It simplifies, strengthens and harmonises the current legislation to provide Britain with a new discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

As well as protecting those already covered by existing equality legislation, the Equality Act also extends some protection to groups not previously covered, and strengthens particular aspects of equality law. The nine “protected characteristics” are: age (from 2012), disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity.

Since December 1996, owners and occupiers of property, including historic property, have had legal duties under Part 3 of the Disability Discrimination Act 1995 not to discriminate against disabled people in their approach to providing services. The duties for service providers are similar under the Equality Act.

However, improving accessibility is not simply about legislative requirements and should not be restricted to disabled people. It is good practice to consider access for all, and the spirit of Heritage Open Days is to be as inclusive as possible and to make events and places physically and intellectually accessible. By putting in place good access for disabled people, access will be improved for others, e.g. families with young children, and older people who do not necessarily consider themselves disabled.

The Benefits of Providing Access for All

Estimates show that there are at least 11 million disabled people in the UK, making up around 20% of the population. These numbers are likely to increase dramatically in the future as we move towards an increasingly aging population.

A Government report “Improving Life Chances for Disabled People” (2005) stated that disabled people had an estimated spending power of £80 billion. Adding the spending power of their families, friends and assistants is likely to more than double this figure. This is a major section of the population, many of whom would like to take part in your Heritage Open Days event if they are able. Visitor numbers are

known to have increased at several heritage venues due to a range of improvements in accessibility and other facilities.

Complying with the Equality Act

The Equality Act states that providers of goods, facilities or services to members of the public must make sure that people with any of the protected characteristics are not discriminated against, harassed or victimised in accessing their services, and they must make reasonable adjustments for disabled people. The law makes no distinction between services that are charged for or those that are free. Therefore, visits by members of the public to Heritage Open Days events are encompassed by this element of the Equality Act. It should be remembered that some visitors may have more than one of the protected characteristics.

Because of a protected characteristic, you and anyone working for you:

- must not refuse to serve someone
- must not stop serving someone if you still serve other visitors who do not have the same protected characteristic
- must not give someone a service of a worse quality or in a worse way than you would usually provide the service
- must not give someone worse terms of service than you would normally offer
- must not put them at any other disadvantage.

It is never illegal to provide better facilities for disabled people in order to achieve equality of outcome.

Making Reasonable Adjustments for Disabled People

Making reasonable adjustments means changing the way in which services are delivered, providing extra equipment, and / or removing physical barriers. This duty aims to make sure that a disabled person can use a service as close as reasonably possible to the standard usually offered to non-disabled people.

What Does This Mean for You?

As a Heritage Open Days event organiser or property owner, you should consider well in advance what barriers might exist for disabled people to access your event and any adjustments that need to be made. If those adjustments are reasonable for you and your organisation to make, then you must make them.

Not Just About Wheelchair Access

Making adjustments is not just about providing wheelchair access; in fact, less than 5% of disabled people use a wheelchair. You should not wait until a disabled person wants to visit your premises or attend your event; think in advance about what people with a range of impairments (e.g. visual, hearing, mobility, learning or mental health) might reasonably need.

Many of the adjustments you can make will be fairly low cost, and you are not required to do more than is reasonable. What is reasonable for you to do depends, among other factors, on the size and nature of your organisation and the nature of the goods, facilities or services you provide.

If, however, a disabled person can show that there were barriers that should have been identified and reasonable adjustments could have been made, they can bring a claim against you.

Different Approaches to Making Adjustments

Reasonable adjustments can be made in three ways. These are:

- changing the way things are done (i.e. provisions, criteria or practices)
- removing barriers created by the physical features of your premises
- providing auxiliary aids or services (e.g. extra equipment, or a different or additional service).

Where a physical feature puts disabled people at a substantial disadvantage, you must take reasonable steps to:

- remove the feature
- alter it so that it no longer has that effect
- provide a reasonable means of avoiding the feature, or
- provide a reasonable alternative method of making the service available to disabled people.

It is better to look at removing or altering the physical feature or finding a way of avoiding it (such as replacing steps with a ramp) before looking at providing an alternative service. An alternative service may not give disabled people a similar level of access.

The kind of equipment or service you put in place will depend very much on the individual disabled person and the event you are organising. For example, technological solutions may be useful in overcoming communication barriers but for some people, a person offering assistance will be what is needed.

How to Decide What is “Reasonable”?

Defining what is a ‘reasonable adjustment’ is extremely relevant to properties of a historic nature, particularly those that are only open to the public a few days a year. Historic properties often contain inherent barriers to physical access that are difficult to overcome without major alterations to the structure of a building. However, there are examples around the UK of successful solutions being implemented to increase accessibility to some very historic premises.

Your overall aim should be, where possible, to remove any disadvantage faced by disabled people with a range of impairments. However, you only have to do what is reasonable. When deciding whether an adjustment is reasonable you can consider the following factors:

- **The effectiveness of the change in assisting disabled people in general or a particular visitor** - If your premises are open to the public all year round, e.g. a Town Hall, then making it accessible will have an effect on more disabled people than premises that are only open to the public for Heritage Open Days events. For instance, it would be unrealistic to expect the owner of a private home to make major structural adjustments for a once-a-year visiting opportunity. Think how else you can deliver the event – e.g. providing pictures of the different parts of the house.
- **Whether it can actually be done** - You can consider whether an adjustment is practicable. English Heritage provides useful guidance in its publication “Easy Access to Historic Buildings”. It is available from www.english-heritage.org.uk/publications/easy-access-to-historic-buildings/ Please note, that, unless you have actually applied and been turned down, you may not claim that Listed Building Consent makes it impossible to carry out access works.
- **The cost** - Making an adjustment that costs little or nothing and is not disruptive would be reasonable unless some other factor (such as impracticality or lack of effectiveness) made it unreasonable.
- **The size and financial resources of your organisation** - If an adjustment costs a significant amount, it is more likely to be reasonable for you to make it if you have substantial financial resources. Your organisation’s resources must be looked at across your whole organisation, not just for the branch or section that is organising the particular event.

In changing policies, criteria or practices, you do not have to change the basic nature of the service you offer.

Communication is Just as Important

Once you have made a reasonable adjustment, remember to tell people about it. For example, put up a sign at your premises, include it in your publicity and put it on your website. This is an essential part of meeting the duty. If the adjustment is not reasonably apparent to disabled people, they may still think they cannot access your premises or event.

Remember that the Heritage Open Days Registration Form allows you to indicate the level of access to your venue or event.

Welcoming a Diverse Public

But regardless of what making reasonable adjustments will look like in your specific context, the attitude of your volunteers will make a big difference to visitors – they are the key asset of Heritage Open Days. It is important that volunteers are briefed on what they can do to welcome and support visitors with different needs and from a range of backgrounds at their site so that as many people as possible can enjoy and care about that special place. Under the law, rude behaviour or treatment that leaves a person feeling humiliated because of a protected characteristic, can amount to harassment or (in the case of disability) failure to make a reasonable adjustment.

Conclusions

The Equality Act 2010 does not require all premises and services to be made fully accessible; it only requires reasonable steps to be taken. Deciding what is 'reasonable' requires careful consideration, and a judgement has to be made on what is reasonable in each situation.

In planning for appropriate access arrangements, remember that access should be for all, and there are substantial social and commercial benefits in improving access to your premises or event. After all, why would you want to miss such a great opportunity to attract more visitors to your Heritage Open Days event?

This fact file was written by Theresa Hodge, Equal Access Consultant and Heritage Open Days organiser in Hastings.

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