

Landlord Law Members Training – Tenant Disability and how it affects landlords



With Justin Bates

If you have any questions, please put them in the Q&A or the chat box. We will answer as many as we can.

25 January 2021

Justin Bates

Tenant Disability and how it affects landlords

A brief history of anti-discrimination laws

Common law duties on inn-keepers

- Generally obliged to offer travellers and their reasonable luggage a room so long as there is space and they can pay
- Reasonable luggage does not include a tiger

First wave anti-discrimination law

- Race Relations Act 1965
- Sex Discrimination Act 1975
- Disability Discrimination Act 1995

Modern basis for anti-discrimination laws

Equality Act 2010

- 1) What characteristics are protected?
- 2) From what kinds of discrimination?
- 3) In what fields of life?

Protected Characteristics

Chapter 1, Equality Act 2010

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Race
- Religion or belief
- Sex
- Sexual orientation

What is a disability?

A person (P) has a disability if—

- P has a physical or mental impairment, and
- the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

“Long term” means

- (a) it has lasted for at least 12 months,
- (b) it is likely to last for at least 12 months, or
- (c) it is likely to last for the rest of the life of the person affected.

Disability – expanded scope

Includes someone who has a disability or has had in the past

Includes someone who is associated with a disabled person (e.g. carer)

Includes someone who is believed to be disabled but actually is not

What is prohibited?

Direct discrimination

- Treating someone less favourably because he/she is (or has been or is thought to be) disabled
- Save for very rare cases (e.g. positive discrimination) it is never capable of being justified.

Indirect discrimination

- Adopting a provision, criterion or practice which appears to be neutral but in fact puts a disabled person at a disadvantage when compared to someone without a disability
- Capable of being justified if it is a proportionate means of achieving a legitimate aim

What is prohibited (2)

Discrimination arising from a disability

- No comparator
- Treating someone less favourably because of something arising from the disability
- Capable of being justified if a proportionate means of achieving a legitimate aim

Needed to overturn *Malcolm v Lewisham LBC*

In what fields of life?

Part 4 – Premises

s.33 - Disposals, etc.

“(1)A person (A) who has the right to dispose of premises must not discriminate against another (B)—

(a)...

(b) ...

(c) in A's treatment of B with respect to things done in relation to persons seeking premises.”

Examples – “No DSS”

- Direct? Indirect? Arising from?

In what fields of life (2) ?

Part 4 – Premises, s.35 Management

“(1) A person (A) who manages premises must not discriminate against a person (B) who occupies the premises—

- (a) in the way in which A allows B, or by not allowing B, to make use of a benefit or facility;
- (b) by evicting B (or taking steps for the purpose of securing B's eviction);
- (c) by subjecting B to any other detriment.”

Examples – eviction; *Ackerman-Livingston v Aster Housing*

- Unlawful act can *never* be condoned by the court / for LL to justify as least intrusive method if an indirect/arising from case
- Possibly arises in reasonableness, depending on whether using s.21 or a Sch 2 Ground

In what fields of life (3) ?

Sch.4 – Duty to make reasonable adjustments

- A bit of a damp squib
- First there has to be a request from the tenant
- Secondly there has to be a “substantial disadvantage”
- Thirdly has to relate to the “enjoyment” of the premises (and see *Beedles v Guinness Trust* for how limited that is)
- Only a duty to take “reasonable steps” to provide the adjustment and what is reasonable varies depending on, *inter alia*, nature and size of LL

Example – assistance dog *might* need to be permitted