PainSmith Solicitors Legal Update

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The Disability Discrimination Act 2005

The Disability Discrimination Act 2005 (DDA 2005) changes the way that landlords and their agents will be required to react to disabled tenants. While much of these changes do little to alter the fundamental requirement for the landlord to respond positively to 'reasonable' requests they do shift the burden somewhat in both evidence and monetary terms.

Currently landlords are required to consider 'reasonable' requests to make alterations to a property in order to make life easier for a disabled occupant. Provided these requests are indeed 'reasonable' the landlord should accept them on the understanding that the tenant will pay for the alterations. Ultimately this may largely be to the landlords benefit as they will have the use of any such alterations after the tenant leaves, meaning that they have access to a wider rental market.

This though is now subject to change. The amendments contained within the DDA 2005 codify more precisely what is and is not a reasonable request and they, to some extent, broaden this beyond mere physical alterations to the premises. They also change the burden of proof in that previously tenants were required to demonstrate that their landlord had been unreasonable whereas it is now the case that landlords are required to show that it is the tenants' requests that are unreasonable. They also place the onus on paying for such improvements squarely on the shoulders of the landlord rather than on the tenant.

The Disability Rights Commission (DRC) has published a consultation document, available on their website at www.drc-gb.org, part of which gives their interpretation of the new rules as they apply to private landlords. While this is a consultation and there is still a certain amount of regulation to come which will clear up some points of uncertainty this document should certainly be seen as a good indicator of how things will end up. There is a questionnaire that landlords and agents can respond to on this website and these responses should be submitted by 14 November 2005. The key points that landlords need to be aware of are laid out below.

First, landlords and agents will need to seriously entertain all requests for 'reasonable adjustments' to a property or to working procedures or services made by or on behalf of a relevant disabled person. The definition of relevant disabled person reaches beyond the tenant and can also include other licensed occupiers (children for example). The term "reasonable adjustments" is not allowed to stretch to the removal or alteration of a physical feature of the property. What is

meant by all this is still a little unclear but it seems to be the case that any change which would require an alteration to fixtures, fittings, or any aspect of the premises relating to design or construction is beyond a reasonable adjustment. Therefore, to give a practical example, a tenant could not ask the landlord to fit a walk-in bath but could reasonably ask for a grab rail to be fitted. It is also notable that the aim is only to allow adjustment within the premises and not to permit changes to the approaches or access to a premises. Therefore, it would not be seen as a 'reasonable adjustment' for the tenant to ask for a wheelchair ramp, for example.

Individuals are also able to make requests with regard to working practices. Examples of this may include asking for documents to be made available in large-print or Braille formats or asking that a sign-language interpreter be on hand during meetings.

There are other available exemptions. Private landlords who have at any time used the property they are letting as their principal home are exempt from having to make any changes provided they have at no time used the services of a lettings professional. This unfortunately means that lettings agents will not be able to offer this exemption to their clients!

Landlords and agents should note that there is currently no requirement that these requests should be made in writing and there is unlikely to be one. A spoken request will have the same force as one in writing. Therefore landlords and agents are going to have to be more careful than ever before with regard to oral requests from disabled tenants as failing to comply with such requests could be costly. In this regard it cannot be stressed too strongly that file notes should be kept of all discussions with tenants including any such requests made.

It is not currently clear on what penalties will be levied for failure to comply with the Act. Currently it seems that this will be a civil matter and will largely be limited to such issues as landlords being held liable for the costs of any alterations made by the tenant after he had refused consent or being unable to regain possession on the grounds that a tenant who had made alterations without consent. More seriously from the point of view of agents is that they bear responsibility for their employees actions if it can be shown that they have failed to provide them with proper training as regards their obligations under the Act.

Landlords or Agents who require further information or advice should investigate the consultation document produced by the DRC or contact a solicitor.

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