

# Health in mind

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## Jane Fielding and Rebecca Jones explain why building managers must consider their responsibilities to occupants with mental health needs

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It is understandable that, when it comes to their obligations under the [Equality Act 2010](#), operators in lettings and property management think first of all about physical access and use. But this is only part of the story.

Here, we turn the spotlight on mental health, which is perhaps one of the less familiar aspects of operators' obligations under the act. One important aim of the legislation is to protect those with mental health issues, many of whom often find that they are not recognised as disabled because they do not have an obvious physical disability. Yet while mental health issues can be difficult to spot, they are just as difficult to manage or address.

In a premises context, the act defines certain protected characteristics for people where they buy, rent, occupy or otherwise use premises. The relevant characteristics are gender reassignment, pregnancy and maternity, race, religion and belief, sex and sexual orientation, and disability.

The act protects occupiers from:

- direct discrimination; that is, less favourable treatment because of a protected characteristic
- indirect discrimination, where persons sharing a particular characteristic are at a particular disadvantage
- victimisation; that is effectively retaliation for raising or supporting a discrimination complaint
- harassment, which is essentially unwanted conduct related to a protected characteristic that has a detrimental effect on a person.

The act also seeks to prevent disability-related discrimination and imposes a duty to make reasonable adjustments, which we focus on below.

## Adjustments

The requirement to make 'reasonable' adjustments is designed to help tenants, occupiers or potential tenants benefit from the full use and enjoyment of the property. The definitions of who is subject to these obligations are complex, but they basically cover: landlords in respect of property already let, plus property they are seeking to let; those managing such properties on behalf of landlords; and those responsible for common parts. Superior landlords can also be required to consent to reasonable adjustments. For ease, we will refer to the groups obliged to make reasonable adjustments as 'operators' and those who request the adjustment as 'occupiers'.

Operators can be required to make reasonable adjustments:

- to remove a disadvantage suffered because of the way in which things are done; this could include changing the terms of a letting agreement
- where a disabled person needs an auxiliary aid or service to prevent them being at substantial disadvantage.

Unlike the equivalent employment provisions of the Equality Act, operators cannot be required to alter physical features. In short, operators can be required to make sensible and proportionate changes that remove or lower barriers for their occupiers.

An occupier must not be asked to make any payment in respect of an operator considering whether to make the adjustment requested. However, this is not the same as an obligation on the operator to pay for all adjustments. In many cases the adjustment will simply require them to alter the terms of a letting agreement without charge, where this would otherwise prevent the tenant making the physical alteration that they seek. The tenant can then have the work carried out at their own cost. The act makes provision for cost sharing where there is joint occupancy of a building, and there are special rules relating to private residential properties.

## Identifying mental health difficulties

The charity [Mind reports that 1 in 4 people](#) will experience mental problems each year; anxiety and depression remain the most common among a potential range of hundreds of recognised mental health conditions.

Poor mental health is not always immediately apparent, and some people manage conditions very effectively much of the time. Operators are not required to anticipate the needs of occupiers in advance. An occupier must ask for an adjustment for the duty to make reasonable adjustments to be triggered.

### Practical tips

- Be alert to hidden indicators of mental health conditions in tenants, occupiers and potential tenants, and train staff to recognise those signs and deal with occupiers appropriately.
- Consider disability at the outset of a tenancy.
- Watch out for passing comments made in conversation that could amount to a request for adjustment.
- Be proactive in asking an occupier to explain why they are making a request and don't be afraid to ask for more information.
- Assume that there is a low threshold for 'disability' triggering the duty to make reasonable adjustments.
- Remember that commercial occupiers can bring claims too.
- Think about what would make a difference to the barriers faced by the occupier before deciding whether an adjustment is 'reasonable'.
- Keep any adjustments and decisions under review.

However, although an individual is required to ask for the adjustment, they want, they are not required to provide information about their disability. Operators would therefore be well advised to ask an occupier about the reasons for their request before taking a decision on whether to implement it and be conscious of warning signs that might point toward a mental health condition, such as the following.

- Has there been a recent change in the individual's behaviour?
- Are there indications that the individual is having difficulty functioning or processing information?
- Are there indications that they are experiencing anxiety or paranoia?
- Is there any other unusual behaviour?

The definition of disability under the Equality Act has several facets that we will not go in to here. Suffice it to say that it is a low threshold, and the safest approach is to presume that a person who is showing signs of a mental health condition will be covered. There is no guidance about getting evidence from occupiers, but the logical starting point is that if an individual says they have a mental health condition or you suspect they might, then it is reasonable to ask for more information.

## What is a 'reasonable' adjustment?

The best approach is to consider what might work to alleviate the disadvantage, and then consider what changes it is reasonable to implement. Although operators are not required to make physical changes to premises, furniture, furnishings, materials, equipment and other chattels are not classed as physical, so adjustments do need to be considered for these.

The installation, provision or adaptation of a doorbell or entry system, replacement or provision of signs or notices, replacement taps or door handles and changes to the colour of a wall, door or any other surface are also areas where adjustments can be required. Potential reasonable adjustments are:

- providing extra time for payment for an occupier who does not pay their rent on time because their depression affects their ability to manage their finances
- advance warning of maintenance visits so an occupier suffering from a severe anxiety disorder or a behavioural disability can have a companion present
- additional security; though an operator is not necessarily obliged to provide a requested high-end solution if a more straightforward option will be adequate
- increased tolerance of non-violent outbursts from a person with borderline personality disorder, who is abusive to other occupiers and their visitors, before eviction is considered
- installing motion-sensitive taps for an occupier who has obsessive compulsive disorder and fixates on water being left running when not in use.

The duty to make reasonable adjustments is a continuing one, and with that in mind, an operator should regularly review the ways it fulfils that duty in the light of its occupier's experience. Physical adjustments should be maintained and repaired in order to ensure that they remain effective.

As the duty is ongoing, an adjustment that is currently considered unreasonable could become reasonable later on? For example, if a product became more widely available, cheaper or better suited to the needs of the occupier over time.

## Discrimination

Although we have focused on the duty to make reasonable adjustments, there are other forms of discrimination that are equally relevant when dealing with people with poor mental health.

- **Direct discrimination** would occur if a prospective occupier is refused a lease because the landlord does not let to people with mental health problems.
- **Indirect discrimination** could occur if a landlord has a rigid policy of beginning immediate eviction proceedings for late payment of rent, which adversely affects people with a particular mental health condition such as depression.

- **Harassment** could occur where an occupier is subject to negative comments from an operator's staff because of a mental health condition.
- **Victimisation** would be relevant if concerns had been raised about the treatment of that occupier and a threat of eviction then made to the person raising those concerns.

## Commercial occupiers

Until recently there has been no guidance regarding protection under the Equality Act for commercial occupiers, and it was often thought that only an individual could claim protection under the act.

The recent case of [EAD Solicitors LLP and others v Abrams UKEAT/0054/15/DM](#), however, determined that corporate entities can claim such protection.

While that was an age discrimination case, a relevant example in this context might be a company working with people having particular mental health conditions, whose application for a lease in multi-let premises is declined because the landlord is concerned about other occupiers' response to their presence.

Such a decision is likely to amount to direct discrimination.

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## Further information

- Related competencies include [Health and safety](#), [Leasing/letting](#), [Property management](#).
- This feature is taken from the RICS *Property journal* (July/August 2016).