STEP UP AWARENESS TRAINING

The aim of the Disability Discrimination Act 2005 is to improve the day to day mobility of disabled people. It's the next step in a long programme to eliminate discrimination. Now that the provisions of the new Act are being brought into force, Raichel Hopkinson **and** Elizabeth Waller **look at the implications for the rail industry and, in particular, for train operators**

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The Disability Discrimination Act 2005 (the 2005 Act) received Royal Assent in April last year. It reads as a set of amendments to the Disability Discrimination Act 1995 (the 1995 Act). But behind the long list of revisions lies an important message to train operators: rolling stock and on-board services will no longer be exempt from compliance with part 3 of the 1995 Act.

Part 3 of the 1995 Act makes it unlawful for a service provider to discriminate against disabled persons. The Act defines a disabled person as someone who has a physical or mental impairment which has a substantial and long term effect on his or her ability to carry out normal everyday activities. The conduct which the Act makes unlawful is either treating a disabled person less favourably than others or failing to make reasonable adjustments to enable him or her to use the service being provided to others.

Stations have been subject to the provisions of the 1995 Act for several years following a phased introduction. In December 1996 it became unlawful for station operators to discriminate by refusing services to a disabled person or providing them on less favourable terms. In October 1999 station operators were required to make changes to their policies to eliminate discrimination and finally on 1 October 2004, they were obliged to take reasonable steps to make changes to physical features which made it impossible or difficult for disabled persons to use the station.

Trains were exempted from compliance with the provisions of the 1995 Act – until now. The amendments enacted in the 2005 Act will lift the exemption for all trains, including underground trains and trams. Implementation will take the form of a set of regulations that transport secretary Alistair Darling says will be brought into force this December.

The regulations will make it unlawful to discriminate against disabled people in the provision of vehicles and the provision of services inside those vehicles. They will go beyond the technical specifications and design standards already required by the Rail Vehicle Access Regulations to demand the elimination of discrimination in all services that are provided. An operator must not treat a disabled person less favourably than those without a disability or fail to make reasonable adjustments to ensure that the disabled person can travel, unless the treatment or the failure to make adjustments can be justified. The result of the 2005 Act is that for the first time, individuals will be able to bring a case against a train operator in relation to onboard services, and any operator found to have behaved unlawfully will be subject to a bill for compensation, which could include compensation for injury to feelings.

The Disability Rights Commission's draft Code of Practice provides invaluable guidance to operators on what could soon constitute unlawful behaviour. This guidance makes it clear that operators (along with all other transport service providers) should be thinking ahead about the accessibility of their services to disabled customers, whether or not they have disabled customers demanding these services.

The practical examples in the Commission's draft code are especially useful in working out how the legislation will be interpreted for services on trains. For example, in relation to the on-board provision of refreshments, the Commission suggests that the customer-service information on the train should explain that those who cannot get to the buffet because of a disability are welcome to an at-seat buffet service and should ask a member of the on–board staff for assistance. Further examples show that there are likely to be different standards of what would constitute a reasonable adjustment, depending on the circumstances and the staffing of the station at which the disabled customer starts his or her journey. If a disabled wheelchair-user wishes to board a train from an un-staffed station, and has booked ahead for assistance in boarding, the operator should ensure that a staff member is available with a ramp to provide assistance when the train arrives at the station. At a mainline station, assistance

should be given even if it has not been pre-booked.

So, what should train operators be doing to prepare for the implementation of these Regulations in December 2006? The first step must be training. Under the 1995 Act, transport service providers are legally responsible for the actions of their employees. Train operators should establish a positive policy on the provision of services to disabled customers on trains, if they are not already covered by their Disabled People's Protection Policies. On-board staff must be trained on that policy and on disability awareness and equality in general. For example, where a disabled person with a heart condition has booked on-train assistance with stowing his luggage and the train manager refuses to assist because the disability is not visible, the operator is likely to be found to be acting unlawfully unless it can show that it took all steps that were reasonable to provide proper training. The Commission's draft code also advises operators to consult with disabled customers and disability organisations in drawing up their positive policies and to ensure that they are reviewed regularly.

Now that the 1995 Act has been fully in force for stations for nearly 18 months it is possible to look to the courts to see what impact the legislation has had there and also for some clues as to how the same laws might be applied to rolling stock and on-board services. Surprisingly, there have been remarkably few cases involving stations. Whether this is simply because cases are not being brought, or whether operators are settling out of court to avoid the adverse publicity and brand damage that often comes with cases of this kind, is difficult to say.

One high-profile case which is worth consideration involved Mr Roads, a disabled and wheelchair-bound passenger who needed access to the eastbound platform at Thetford station for a journey to Norwich. Unable to use the footbridge, the only way he could reach the eastbound platform was to travel along a busy road for half a mile in his wheelchair. Central Trains' solution was that Roads should take the train to Ely where it was possible to change platforms in a wheelchair and travel back to Norwich. This would have added over an hour to the journey time. The Court of Appeal decided that Central Trains was guilty of unlawful discrimination by not providing a wheelchair-adapted taxi to take Roads to the eastbound platform at Thetford. However, this case should be treated with some caution as a precedent. Central Trains did not argue that the cost of providing such a taxi would have made this solution unreasonable. This meant that the case was conducted on the artificial assumption that the taxi was cost-free. In actual fact the taxi would have had to have been brought from Norwich (as there were no suitable adapted taxis any closer), taken Roads on his short journey and travelled back to Norwich, at a cost of £50. The judge hinted strongly that, had this been argued by Central Trains, it might have had a bearing on the result. As it was, Central Trains was ordered to pay Roads £1,097 for unlawful discrimination and his legal costs of £20,000.

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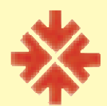
Also of interest, albeit in another part of the transport industry, is the recent case of Ross v Ryanair . In this case, Ryanair was found to have acted unlawfully by not providing a wheelchair-service free of charge to Mr Ross at Stansted airport. Ross had restricted mobility and although he did not check in with his own wheelchair, he was unable to walk the distance to the plane. Ryanair's policy was that customers who required a wheelchair but who did not have their own would be directed to a wheelchair service provider who would provide assistance for a nominal fee, payable by the customer. The Court decided that Ross was entitled to enjoy the service at Stansted airside at no extra cost to him than is incurred by those who did not have his particular disability, and that Ryanair was guilty of unlawful discrimination against him by not providing a wheelchair free of charge. Ross was awarded £1,000 for injury to feelings, and a further £336 in respect of costs that he had incurred in buying a wheelchair and hiring wheelchair assistance at the airport. On appeal, the Court found that Stansted Airport was liable to pay 50 per cent of the damages that Ryanair paid to Ross. This was because it knew about Ryanair's policy, did nothing to prevent it contractually and did not provide a wheelchair free-of-charge itself.

There will no doubt be further instances leading to complaints and possibly claims. Last year's National Audit Office report on Maintaining and Improving Britain's Railway Stations found that rail travel was the least accessible mode of public transport for the disabled, with 70 per cent of disabled adults never using local trains and 77 per cent never using long distance trains. It remains to be seen whether the new Regulations will help to reverse this trend.

The authors are part of the rail team at Denton Wilde Sapte.



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EUROVIB ACOUSTIC PRODUCTS LTD
Goodwood House, 86 Holmethorpe Avenue, Redhill, Surrey RH1 2NL
Telephone: (01737) 779577 Fax: (01737) 779537
sales@eurovib.co.uk www.eurovib.co.uk