

Disability and The Law - Narrator voice-over

Script: V3.1N
File: DAL Script 3-N.pdf
Date: 17th March 2015
Author: MD & AP

GFX: Part one - Introduction & Access

NARRATOR

(0.01) In England & Wales too few disabled people know their rights under the law, so many suffer unnecessarily.

(0.02) This film seeks to help, by outlining the law as it relates to those with disabilities. Of course a short film cannot possibly be definitive, so specialist professional advice should be sought, either from a solicitor, via a charity or NGO, such as the Citizens Advice Bureau, or even through trade unions.

(0.03) Successive governments have sought to fight discrimination and prejudice. In 2010, under the Equality Act, disability was defined as:

“A physical or mental impairment that has a ‘substantial’ and ‘long-term’ (12 months or more) negative effect on your ability to do normal daily activities.”

(0.04) The Act was passed primarily to protect employees and workers. It covers recruitment, employment terms and conditions, promotions and transfers, training and dismissals.

(0.05) In addition to disability at work, this film will look at other topics such as: access to public spaces, buildings and transportation; access to adequate healthcare; medical negligence and personal injury; welfare and benefits; managing financial affairs; and travelling with a disability.

GFX:

Part one - Access to Public Spaces, Buildings & Transportation

(2.01) Today's legislation seeks to ensure that disabled people are not disadvantaged when it comes to public access.

(2.02) A disabled person has a right of access to services that are available to the general public, from government buildings, to pubs, restaurants and shops.

(2.03) In the majority of cases you can expect premises that are open to the public to be adapted. But because the UK has a lot of old properties, not every property has to alter its premises or change its business.

(2.04) If an organisation cannot reasonably change its premises, they may offer their services in other ways, such as a 'come-to-you' retail service, with a bell, or by offering services via the internet.

(2.05) Disabled people must not be charged for any specially adapted access service.

Whilst there are again 'grey areas', the law is clear about the access requirements and rights in certain instances:

(2.06) In venues such as swimming pools and care homes, handrails should be provided. At concert venues ramps and automatic doors should be provided for wheelchair users.

(2.07) But there is still a lack of absolute rights in many areas, and the requirements in law are somewhat vague: pubs, for example, 'might' choose to provide an adapted loo with a low-level washbasin facility, but it depends on each individual circumstance.

(2.08) Faced with older and 'hard-to-adapt' buildings, the service provider can make changes or adopt a reasonable alternative method of supplying that service.

(2.09) Whilst the outcomes aren't always ideal, at least the law requires service providers to consider the needs of disabled people.

(2.10) This duty is owed to disabled people generally, so the service provider must anticipate the needs of disabled people, and make reasonable adjustments.

GFX:

Part two - Access to Adequate Healthcare

(3.01) The NHS was set up in 1948, by the post-war Labour Government to provide healthcare to all citizens based on need, rather than their ability to pay.

(3.02) To benefit from long-term NHS treatment you must live in the UK on a settled basis.

(3.03) The Equality Act of 2010 requires all people to have the right of equal access to public and independent health services.

(3.04) This includes physical access to surgeries, hospitals and mobile units.

(3.04) 'Access' also includes the right to information such as treatment options, and the NHS complaints' procedure.

(3.05) This might include alternative options such as extra help for those with poor sight or hearing problems.

(3.06) As with employment law, medical service providers cannot discriminate on the basis of characteristics such as race, disability, gender, religion, belief or sexual orientation.

(3.07) In addition to national laws, there is also the European Convention on Human Rights.

(3.08) Some of these European Convention rights can be applied to healthcare - a classic example of this would be the following: the right to life, the right not to be subjected to degrading treatment, the right to privacy and family life, and the prohibition of discrimination.

(3.09) Not only is discrimination illegal, but public authorities, such as the NHS, have a legal responsibility to positively promote equality.

(3.10) NHS organisations must make reasonable adjustments to meet the needs of disabled users.

(3.11) 'Reasonable adjustments' means that service providers have some flexibility, or some may say 'wriggle room'. This means that "The adjustments that will be expected within an individual GP's surgery will be different to those expected within a hospital or a large healthcare organisation".

(3.12) Communication is also a right for those using public healthcare: people have a right to communication that they can understand, and a right to discuss their care with the relevant people.

(3.13) However in situations such as an emergency or

'life and death' situation, urgency of treatment may take priority over communication.

(3.14) The care that people may need varies from primary care, such as a doctor's visit, to hospital care, right through to emergencies. Disabled people have a right to register with a GP practice and to receive free primary care. They also have a right to free emergency treatment from an A&E department or walk-in centre.

(3.15) When a person requires longer-term care, following - for example - hospital treatment, the medical team may determine that a person's 'primary need is a health need'.

(3.16) In this situation, a person will be entitled to continuing NHS care whereby their on-going needs will be funded long-term by the NHS after they have left hospital.

(3.17) Those needing long-term care, but whose 'primary need is not a health need' would be eligible for help from their local authority. This would involve a different set of eligibility criteria.

(3.18) There are some areas where NHS patients are required to pay; prescription charges for example, or charges for spectacles and for dentistry. Some people are exempt from charges, but this will depend on individual circumstances, and is designed to ensure necessary care is available to all who need it.

(3.19) It is for the same reason that some people in financial need may be entitled to help with the cost of fares getting to and from hospital for treatment.

(3.20) You should check with your healthcare professional that you get the help you need, and that you are not discriminated against.

(3.21) Most people are very well cared for, but if you feel that you have been treated unfairly, or have been discriminated against, you should raise the issue with the healthcare provider. It is important not to delay doing so as there is often a cut-off point, currently six months in the NHS.

(3.22) If you cannot reach a satisfactory conclusion with your provider, you may consider third party professional support, such as patient advocacy groups, the Citizen's Advice Bureau, or a law firm.

GFX:

Part three: WORK.

(1.01) Disabled people who work, or who are seeking work, need to know that they may have a 'protected characteristic'. Protected characteristics are traits that, under the law, cannot be used to discriminate against someone.

(1.02) These characteristics include not just disability, but: age; gender reassignment (sex change); marriage and civil partnership; pregnancy and maternity; race; religions or beliefs; sex; and sexual orientation.

(1.03) The law identifies a number of types of discrimination: direct discrimination, indirect discrimination, discrimination arising from a specific disability, associative discrimination, perceptible discrimination, victimisation & harassment, and failure to make reasonable adjustments.

(1.04) Direct discrimination is when someone with a protected characteristic is discriminated against directly, such as a firm's failure to recruit a person because of their disability.

(1.05) Indirect discrimination is when an organisation's policies, practical requirements, or rules affect disabled people disproportionately and unfairly, such as insisting that all employees start work at a particular time, when the requirement is difficult to comply with for the disabled people who, for example, may have difficulties in travelling to work, or medical reasons why an early start is not possible.

(1.06) Discrimination arising from disability, means treating someone badly because of a characteristic of their disability, such as dismissing a dyslexic person because of spelling mistakes.

(1.07) Associative discrimination means treating someone badly because they are associated with a disabled person, such as a parent with a disabled child who has to leave work early to deal with a problem.

(1.08) Perceptible discrimination means treating someone unfairly because it is believed they have a disability even when they may not.

(1.09) Victimisation is when a person is treated badly because they have supported a complaint, or raised a grievance about discrimination.

(1.10) This can include situations where a person is refused a reference because they made a complaint under the 2010 Equality Act.

(1.11) Harassment is where the perpetrator reacts in an unpleasant way to a person's disability. Harassment is any act that violates the victim's dignity, creates an intimidating atmosphere, or is degrading or offensive. Employers who know about harassment, and who do nothing, may also be guilty.

(1.12) Unfortunately there are many grey areas in anti-discrimination legislation.

An example is the requirement for an employer to make 'reasonable adjustments' to ensure that discrimination does not occur. An employer who fails to make 'reasonable adjustments' can be guilty of discrimination. The reason why this is a grey area is that what is 'reasonable' will depend on the circumstances of each case.

(1.13) Reasonable adjustments include (but are not limited to): physical adjustments; reallocating duties; providing a different but suitable job; altering hours of work; moving to another place of work; time off for treatment or rehabilitation; arranging training; acquiring or modifying equipment; altering instructions or reference materials; altering procedures for testing or assessment; providing a reader or interpreter, or providing supervision.

(1.14) If an employee feels they have been discriminated against there are several things they can do. The first step is to follow the employer's grievance procedure. Hopefully any issue can be solved quickly and amicably.

(1.15) A person may, however, choose to seek external advice, and sources of help include a trade union, ACAS - the advisory, conciliation & arbitration service, a trade association, a solicitor, the Citizen's Advice Bureau, a legal advice centre or a free legal help-line that's linked to personal injury insurance.

(1.16) The legislation protects people whilst making a complaint or claim, so that they can continue to work in the same place and in the same job, whilst their complaint is investigated.

(1.17) If you cannot remain in the workplace, you may choose to resign and claim discrimination, and also claim constructive dismissal. This must be done within three months of the date of termination, so always act promptly and seek professional advice.

GFX:

Part four - Welfare & Benefits

(5.01) The British welfare system dates back to 1945, under the Labour Prime Minister Clement Attlee.

(5.02) Over time it has become increasingly broad and complex. Today the Department of Work and Pensions handles the system, with some aspects delegated to local Councils (such as Housing Benefit).

(5.03) Currently the system is the subject of a major overhaul as the Government tries to save costs by reducing dependency on long-term disability benefits. The situation is constantly changing, so it is important for claimants to keep abreast of changes as they affect them.

(5.04) So, how does the current system work?

(5.05) Eligibility for benefits depends very much on individual circumstances. When someone is made unemployed, for example, there is a range of benefits that can help with living costs, rent or mortgage costs, and help with immediate financial needs.

(5.06) But one does not need to be out of work to be entitled to certain benefits. When talking to the DWP or your Council it will help if you write down your needs as they relate to your disability.

(5.07) Some benefits are 'means tested', that means they are based on a person's income and assets. Someone with substantial assets may not be entitled to help, whereas someone living 'hand-to-mouth' will. Currently if you have capital of £16,000 or more you will not qualify at all for certain means-tested benefits. If you have capital between £6,000 and £16,000 you may qualify, but may have a reduction made.

(5.08) When making a claim you should have a note of all income, savings, and assets, so that you can prove your eligibility.

(5.09) There are more than 50 benefits, allowances, credits, grants and payments, and all of these are subject to change, so it can be rather bewildering.

(5.10) In some cases certain benefits may entitle you to linked benefits, these are known as 'passported benefits'. For example, if you receive Child Benefits, this may entitle you to passported benefits such as: school meal benefits, uniform allowance, and school trips allowance.

(5.11) If you have someone caring for you, then they may be entitled to a 'Carer's Allowance'.

(5.12) Help is also available for care equipment, (such as

special loo seats), home adaptations (such as grab rails and ramps), even adapted computer systems and access to the internet.

(5.13) There are benefits that also help disabled people to travel, such as the Motability scheme, exemption from car tax, the blue badge scheme, and travel concessions (such as a bus pass).

(5.14) There are also age-related benefits, such as pension credits and an attendance allowance to ensure the old and frail can be helped out at home. But this too is subject to change with the shifting of the state pensions to a single tier system.

(5.15) More specific benefits include help for ex-forces personnel, such as the Armed Forces Compensation Scheme. If you receive a War Discrimination Pension and you need daily care because of a disability, you can claim Constant Attendance Allowance. This can also be claimed if you are in receipt of Industrial Disablement Benefit.

(5.16) There are also Industrial Injuries benefits for those injured at work, and Disabled Facilities Grants, council tax payments, and the WaterSure scheme.

(5.17) Disabled people (or those caring for them) should try to not become too intimidated by the system,

(5.18) they should ask questions of the DWP and their local Council, based on their needs, to ensure that they get appropriate help, and everything to which they are entitled under the law.

(5.19) If a disabled person, their family members or carers, feel their needs are not being met, and they have exhausted the help provided by the DWP and Council,

(5.20) you can also get independent advice via your local MP, local councillor, the Citizens Advice Bureau, an organisation or charity that represents disabled people. In some instances a solicitor or financial advisor may be useful, but they may charge a fee. People can even discuss problems that impact on their well being with their GP.

The main thing is to know your needs, ask relevant questions, don't give up, and definitely don't suffer in silence!

Part five - Personal Injury & Medical Negligence

(4.01) Sometimes a person becomes injured though no fault of their own. In this instance that person's life may be compromised, and they may be entitled to appropriate compensation.

(4.02) To claim compensation the victim must be able to show negligence, which means that someone must owe you a duty of care.

(4.03) That may be the care owed you by another road user, who drove carelessly, the care owed you by your employer, who may have failed to properly assess a workplace risk, or it could even be a situation where medical care was sub-standard.

(4.04) Of course we all have an obligation to take personal responsibility, and in some instances nobody may be to blame. But even when a person contributes to their own misfortune it doesn't necessarily mean a claim is not possible, but it may reduce the level of compensation as there was 'contributory negligence'.

(4.05) The aim of compensation is to help - as far as possible - to return a person to the situation they were in before the incident occurred.

(4.06) Compensation is awarded in three categories: 'general damages', which are awarded for pain, suffering and loss of amenity or useful function;

(4.07) 'past financial losses', which might include lost earnings, past care and travel expenses;

(4.08) and 'future financial losses', such as future lost earnings, future care costs, equipment such as wheelchairs, adapted vehicles and adapted property to accommodate a disability.

(4.09) The value of claims can vary enormously: a relatively short term and transient problem may warrant just a few thousand pounds, whilst a serious disability where a person may never work again, may run into millions to ensure care for the rest of that person's life.

(4.10) If you wish to make a claim you should approach a law firm that is accredited by the Association of Personal Injury Lawyers.

(4.11) Such firms will have solicitors who are also members of panels, such as the Law Society Panel, or the AvMA (action against medical accidents) panel.

(4.12) A firm that meets these criteria will be competent and experienced at this kind of work.

(4.13) There are schemes whereby the legal costs of making a claim can be off-set, and be based on whether the case is successful or not. The law on 'conditional fees' has been recently reformed, so, when seeking a solicitor, you should ask them to explain your options up-front, and before you incur any costs.

Part Six - Finances

(6.01) Money is a resource upon which we all rely, however much (or little) you have. Managing it effectively is important.

(6.02) For some disabled people this can be a challenge, and for more seriously disabled people, impossible.

(6.03) So there are several money management options for disabled people. These include 'Third Party Authority', a 'Benefits Appointee', power of attorney, and trusts.

(6.04) Third Party Authority is the appointment of another person to manage a disabled person's bank accounts. The appointed person can be anyone that the disabled person trusts.

(6.05) Third Party Authority can be set up quite simply with a form that the disabled person signs. If they cannot sign, then the bank or building society should be notified so they can make other arrangements.

(6.06) Third Party Authority can be removed at any time by the account holder.

(6.07) A disabled person can also appoint a trusted person as their Benefits Appointee. This Appointee can make claims on behalf of the donor, and can receive benefit payments on their behalf.

(6.08) To set this up you need to contact the local Jobcentre Plus or DWP office, depending on the benefit being received.

(6.09) Setting up a Third Party Authority and/or a Benefits Appointee is easy and inexpensive.

(6.10) If someone has more complex financial affairs, they may need a more sophisticated set-up. For example, someone with 'locked-in' syndrome, who wants to buy a property.

(6.11) Power of attorney requires a legal document in which the disabled person, known as the 'donor', gives an attorney the legal authority to deal with their accounts on their behalf.

(6.12) The attorney has a legal responsibility to act on behalf of the Donor, and to consult with them before making a decision.

(6.13) Whether or not a person needs help may be determined by their mental capacity. A person is determined to have mental capacity unless it can be shown that they are not able to make a decision.

(6.14) If they are unable to retain information, use this information to make a decision, or to communicate a decision.

(6.15) The process of determining a person's mental capacity starts with family members and friends. It will also involve obtaining a medical opinion on the capacity of the individual to manage their own financial affairs.

(6.16) Once someone has insufficient mental capacity to agree to a power of attorney, one cannot be set up. This agreement is made in association with the Office of The Public Guardian, which also deals with any possible abuse.

(6.17) If a person loses their mental capacity before agreeing to a power of attorney, then a family member or friend must make an application to the Court of Protection.

(6.18) The Court will appoint a deputy to manage financial and property affairs, and will determine what the deputy can and cannot do.

(6.19) The deputy will submit an annual report outlining their decisions, plus an account of income and expenses.

(6.20) A family member or friend can be a person's attorney, deputy or trustee. Or a professional representative, such as an accountant or a solicitor, can fulfil the role.

(6.21) All people should consider having a Will drafted. A will should explain what will happen to a person's estate, including money, property and possessions, after they die.

(6.22) People should seek professional advice when creating a Will to ensure that their wishes are correctly fulfilled.

(6.23) For those lacking mental capacity a Statutory Will can be created on their behalf, with the approval of The Court of Protection. This can be costly, so advice should be sought about whether such a will is necessary in each case.

(6.24) Unfortunately, a person's financial management can cause family conflicts. They are, sadly, quite common. It is best if such conflicts can be resolved amicably, and by negotiation. However sometimes there is no option but to resort to the legal process.

(6.25) At this point things can get complicated, so legal advice should be sought.

(6.26) An attorney must act in their client's best interests, and in the interest of their donor, whilst taking on board the interests of everyone else involved, before making a decision.

(6.27) At times a situation can be resolved only in court, at which point legal advice is essential.

(7.01) It wasn't so long ago, that disabled people were rarely seen out and about. Thankfully though, today there are many opportunities for disabled people to travel.

(7.02) A change in attitudes, combined with legislation, has helped to ensure access to transport.

(7.03) On railways in the UK, every train company must produce a Disabled People's Protection Policy (DPPP).

(7.04) This means that rail companies must make arrangements to ensure that disabled people can access their stations and their trains.

(7.05) As the network is not yet perfect, it is wise to check that a specific station, route, and journey times will provide the necessary assistance and facilities. Especially when planning to take a new route for the first time. Notifying the carrier enhances their obligation to assist.

(7.06) Many disabled people use cars regularly, some as drivers, some as passengers.

(7.07) Disabled drivers must notify the DVLA of their medical condition or disability.

(7.08) Disabled drivers may be entitled to a Blue Badge which will allow them to park closer and more conveniently at their destination, and may provide space around the vehicle for wheelchair access if necessary.

(7.09) Whilst disabled car drivers, like any driver, must be appropriately insured, those using powered chairs or electric scooters on the road do not need insurance. Scooter or power chair users should consider insuring themselves. If they were to accidentally hit a pedestrian or damage a parked car, they could be sued.

There are firms that specialise in insurance for disabled people, and who can provide advice.

(7.10) For those with an adapted vehicle, there are many safety requirements and standards for special adaptations. Reputable dealers and Occupational therapists should be able to advise disabled drivers of the equipment and fittings they need.

(7.11) Drivers of vehicles carrying disabled people, such as community transport organisations, have a legal obligation to ensure that their passengers are carried safely, and according to the law.

(7.12) So passengers should check with their carrier that the restraint systems, etcetera, meet the requirements of the law. This is particularly important for wheelchair users with heavier powered chairs that require strong restraints. The

best systems are crash tested.

(7.13) In England & Wales, disabled persons are entitled to bus passes as part of the English National Concessionary Scheme. Information should be sought from the Local Authority.

(7.14) Bus and coach drivers must give 'reasonable assistance' to disabled people, such as helping them on or off the vehicle. But this does not mean lifting people or heavy wheelchairs.

(7.15) Taxi drivers must not discriminate against disabled passengers, or treat them less favourably than other people. They must also make reasonable adjustments to their service in order to make a journey easier.

(7.16) Assistance dogs must be allowed in taxis unless the driver has an exemption certificate (having an allergy, for example). It is also illegal for taxi drivers to charge extra for carrying an assistance dog.

(7.17) However there is no national requirement for licensed taxis to be wheelchair accessible. This is due to the practicality and cost of universal provision. Fortunately though there are enlightened firms that do have specially adapted vehicles, so passengers needing wheelchair access should seek a local firm that offers this service. Planning ahead will help ensure availability. The correct wheelchair restraints are, however, a legal obligation.

(7.18) Airport operators and airlines departing from UK airports also operate under European Union legislation. So, in theory at least, there should be consistent rights for disabled people flying within the EU. In reality

however, implementation of services for disabled people is patchy, so forward planning and notification is wise.

(7.19) Under European legislation, disabled travellers have a right to:

help at specific arrival points, such as at terminal entrances, at transport interchanges, and in car parks;

help to reach check in; help with registration at check in; help moving through the airport; including toilets if required;

(7.20) Disabled air travellers are entitled to this help whether they have a long-term disability, or a short-term disability, such as a broken leg.

(7.21) Disabled travellers are also entitled to carry two items of mobility equipment free of charge, above and beyond the standard baggage allowance.

(7.22) Wheelchairs cannot be taken into the passenger cabin, so must be stowed in the hold, as must powered

wheelchairs. There are safety issues with certain types of power chair battery, so check the make and type with your carrier well before travelling.

(7.23) Also, airlines have their own arrangements for assistance with boarding and disembarking, so you should check what will happen, and when.

(7.24) Those who require an assistance dog can travel with them on the aircraft, but they are subject to the normal pet travel rules, such as microchipping and vaccinations.

(7.25) Disabled travellers flying in the EU should notify their airline and the airport of their needs at least 48 hours before departure.

(7.26) If things should go wrong, then complaints should first be raised with the airline, travel company, or airport management.

(7.27) If things go seriously wrong, and the carriers provide no satisfaction, then travellers may have some legal comeback, so they should contact a solicitor.

(7.28) When travelling into Europe by train, rights for disabled people are less satisfactory as EU-wide rights have yet to be established into law, so they vary from state to state. This current inconsistency means more research when planning a trip.

(7.29) For those wanting to travel by train with any frequency, it may be worth contacting your MEP to ask when this legislation will be finalised.

(7.30) If sailing to Europe by ferry then rights are thankfully more clearly defined:

(7.31) Those with reduced mobility have a right to non-discrimination when reserving a trip; non-discriminatory access when boarding; a right to special assistance; and a right to compensation if disability equipment is lost.

(7.32) Also, if a disabled traveller requires a carer, then that person may travel free of charge. This applies to ferries only, and not to cruise ships.

(7.33) Since the implementation of the Americans With Disabilities Act, accessibility at US airports, on US airlines and in public buildings is generally in line with those in the UK.

(7.34) However, some USA legislation and standards vary from state to state, so it's important to contact the carrier and to check facilities before embarking on a journey.

Careful planning and timely communications are key.

(7.35) Other countries in the developed world have also

improved standards for disabled travellers in recent years..

(7.36) There are many areas of the world where standards fall well short of Western expectations, and where facilities for those with disabilities are pretty much non-existent. When travelling from the UK you have the rights we have outlined, however you need to check that the return leg will meet your needs.

(7.37) When planning any trip it's worth writing down the help and facilities that you need at every step of the journey. This list will be useful when contacting the relevant service providers.

(7.38) Overall the law is steadily improving the 'lot' of disabled travellers, as are changing attitudes, but it is still wise to plan carefully when making any trip.

(7.39) Disability and The law is a massive topic. It's a lifetime's work for teams of professional and highly qualified people.

(7.40) So this short film can only touch on a few of the key issues.

(7.41) We hope that this initial overview of the law as it affects disabled people is useful, that it helps to empower you a little, and encourages you to know more. Because the better acquainted you are with your rights, the easier things are likely to be.

However, because the law is subject to change and "a little knowledge can be a dangerous thing", we advocate getting expert advice and help should the need arise.

ENDS