



Improving disabled people's access to let residential premises: reasonable adjustments to common parts, a new duty

Response from Inclusion London

Inclusion London

Inclusion London welcomes this opportunity to submit our evidence to this consultation. IL is a London-wide user-led organisation which promotes equality for London's Deaf and Disabled people and provides capacity-building support for over 70 Deaf and Disabled People's Organisations (DDPOs) in London. Through these organisations, our reach extends to over 70,000 Disabled Londoners.

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General points

We respond to the questions we are best qualified to respond to.

There is a huge shortage of accessible housing in England¹. We welcome any measures that have the potential to improve accessibility of homes. We have been calling for bringing section 36 and Schedule 4 of the Equality Act 2020 into force for many years and we believe this is a positive step.

However we think this measure is insufficient and more strategic approach to making common parts of the building accessible is needed.

If more accessible new homes will be built, the less there will be a need for adaptations under sec 36. This is why we welcome the commitment to mandate higher accessibility standards for new built homes².

Our key concerns related to section 36 are:

Making Disabled people pay for the adjustments to common parts, their maintenance and removal will severely restrict the number of people who are able to benefit from these provisions. We are especially concerned about those who

- Need adaptations which are more expensive than what can be paid for through Disabled Facilities Grant;
- Do not qualify for DFG, because of the means-test but nevertheless cannot afford the adaptations;
- People whose financial circumstances change and they can no longer afford the maintenance;

We strongly believe policies to improve accessibility should not place financial administrative or other burden on Disabled people.

We are also generally concerned that the provisions of section 36 place a lot of burden and responsibility on Disabled people and the consultation questions do not ask about the assistance Disabled people may need within this process.

Disabled people might need help to

- Understand their rights under these provisions;

¹ https://www.gov.uk/government/statistics/english-housing-survey-2018-accessibility-of-english-homes-fact-sheet?utm_source=5bf08ea4-39b5-46fe-b377-9cc20fe9dc96&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

² <https://www.gov.uk/government/consultations/raising-accessibility-standards-for-new-homes/outcome/raising-accessibility-standards-for-new-homes-summary-of-consultation-responses-and-government-response>

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- Understand and identify the best reasonable adjustments option for them. Not everyone can get support from local authority,
 - Understand how to calculate a cost estimate to assess whether the adjustment is affordable. Know where to get support with drawing up plans. Some adjustments might require input from professionals with different expertise. Disabled people may need help to find those professionals.

We are also concerned about the need to remove adaptations. We understand there may be rare circumstances when this may be necessary, because adaptations are very individualised. However, if the adaptations made as a result of section 36 duty make the building more compliant with the requirements of part M of building regulations, there should not be a responsibility to remove them.

Our response to consultation questions

Question 1

Do you think any types of property should be excluded from the proposed reasonable adjustments duty? (Yes / No) If Yes, explain what types of property.

Since the duty is only restricted to what is “reasonable” we believe the list of types of accommodation exempted from this duty must be at bare minimum.

Question 2

Do you think that guidance should set out what a “reasonable period” should be for the landlord to complete the tenant consultation process following a reasonable adjustment request? (Yes / No)

Yes, we believe it is absolutely necessary to set a time limit for the consultation. This will reduce the uncertainty for Disabled people, and will

encourage landlords to take action. This clarity also has potential of reducing unnecessary disputes.

Question 3

Do you have any views to add on how landlord-tenant consultation arrangements should work? (Yes / No) If “yes”, please state your views.

The consultation process must be held in a way that promotes equality for Disabled people and good relations between residents. It might be useful to design template documents for a consultation with the wording to support the landlords to do this.

We welcome the clarification that the landlords can refuse to take the views into account if they are motivated by discrimination. We also welcome the fact that non-response to a consultation should not be treated as a rejection of the proposal.

We believe the purpose of the consultation should be for the landlord to identify potential risks, mitigation measures and solutions that would work. A consultation should not be treated as a vote on whether or not to make the proposed adjustments.

Question 5

Do you think further guidance is needed on the use of project management fees for section 36 works?

Yes, the guidance is needed. We generally oppose the fee, especially if it will add to the expenses of a Disabled person. The guidance on how the fee should be calculated, what it should cover and how it should be charged should help to ensure those fees are not excessive, are not used as a way to make profit and are not acting as an extra barrier in person getting the adjustments they need.

Question 6

Who should pay for the costs of adaptations to the communal parts where this is required and reasonable? Please select from the list below.

We believe all the options listed in the consultation document are not a suitable solution.

- It goes against all principles of the social model of disability and addressing the barriers that Disabled people face to make Disabled people responsible for the cost of adaptations. Those adaptations do not increase the value of their property, they just make it easier for a person to use the common parts. Reasonable adjustments in other areas, such as service provision, employment, public functions are free for Disabled people and this is how it should be. The provision in Schedule 4 allowing for the cost to be recovered from an individual is not logical. It will restrict the benefit of section 36 duty to a very small group of people and therefore implementing this section of the Equality Act will not reach its potential in improving the accessibility of housing for Disabled people.
- If landlords are made to pay for the adjustments, there is a big risk that they will be more reluctant to rent or sell to Disabled people.
- If the cost is shared among all residents, this could lead to unnecessary hostility towards Disabled people.

Question 8

Other than possible Disabled Facilities Grant support, what provision should be made to protect the disabled resident where other leaseholders cannot help to pay for the work?

Some Disabled people may qualify for funding from Disabled Facilities Grant; however DFG is means-tested, therefore there will be a group of people excluded from its provision, DFG is capped and adjustments to common parts could cost more than £30,000. DFG will not pay for the maintenance, removal and repair, the cost of which may be prohibitive.

We believe reasonable adjustments to common parts of buildings should be funded by the national government. Similar to how adjustments for disabled people in employment are funded by Access to Work. This funding should be

non-means-tested and the funding for each individual case should be based on the need.

Question 9

Do you anticipate any risks with landlords being able to decide how costs should be allocated?

Yes, the landlords are more likely to be legal entities, with more resources and greater experience. There is very little protection for a Disabled person if the landlord asks for the costs to be paid up front for example. As the person concerned will then lose control over how the works are carried out, how quickly and with what quality. Disabled person is in a weaker position in this process as it is them, who require the adjustment and therefore are much more likely to agree to unfavourable allocation because they need the adjustments made.

Question 10

Do you foresee any risks, to any of the parties concerned, in cases where the landlord deems it appropriate under the lease to pass on the costs of the adjustment to all leaseholders?

We see a potential risk of hostility towards a Disabled resident concerned. The likelihood of this risk will depend on the situation and how the freeholder manages it. The way to mitigate this risk is to fund those adaptations from another source. See our response to question 8.

Question 12

There is no power in the Equality Act to set out a mandatory form or template that residents and landlords must use to manage the process, from initial application for an adjustment through to landlord decision, however, the Government could, provide a template for voluntary use. Would you welcome a model form or template, which would be included in the guidance?

Yes, those templated could be helpful in ensuring Disabled people provide all the necessary information in their request for adjustments, the landlord carries out a consultation in a way that promotes good relations, the decisions gives enough information for a Disabled person. As stated above we believe it is important for this template procedure to include time limits for each stage of the process.

Question 13

Are there any other considerations on reasonableness that you think the guidance should cover? Yes.

We think in addition to the factors listed, the landlords must consider The level to which the accessibility of the building for Disabled people in general will be improved and a wider benefit of adaptations on a wider group of Disabled people, who can visit the building as guests or potentially rent or buy in the building.

It is also important to consider the disadvantage experienced by a Disabled individual concerned and the impact on their life.

Question 15

After a landlord has agreed to an adjustment, as well as setting out the requirements of a written agreement between the parties, the Government could also set out a mandatory form for this purpose.

Yes

Question 17

If you answered “yes”, to either question 15 or 16, what would you like to see covered in a mandatory or voluntary form?

We believe the following should be included in the template:

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- Description of the works to put the adjustment in place,
 - What the adjustment is;
 - Who will be responsible for implementing the works;
 - If the landlord is managing the work, the rights of a Disabled person to monitor the quality, raise concerns, be updated about the progress;
 - If a Disabled person managing the work, the landlord's duties to provide access and necessary assistance;
 - Responsibility for maintenance and repair;
 - How disputes should be resolved.

Question 18

Do you agree that the landlord should be required to set out in the agreement how the disabled person's money will be held and paid over to the contractor?

Yes

Other comments and issues

If alternative dispute resolution process is introduced the time to lodge a claim for discrimination with county court must be extended. We are unsure about the benefit of ADR in this situation as in practice any claim will include a pre-action letter and if there was a willingness to resolve matters without going to court, the pre-action process could be used as well as ADR within the legal action. Introduction of a separate process may just delay the resolution of the issue and potentially lead to Disabled people having to live in inaccessible building for longer.