

UK Legal News Analysis

## **Websites Must be Accessible or Disability Discrimination Suits Could be Filed**

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### **Jurisdiction**

UK

### **Related Legislation**

Disability Discrimination Act 1995, Equality Act 2010

### **Related Digests**

Consultation: Inquiry into Disability-Related Harassment - Call for Evidence,

LNB News 14/06/2010 54

### **Abstract**

**The new draft BS 8878 Web Accessibility Code of Practice, issued by the BSI, sets out a non-technical standard on web accessibility for the disabled and the elderly and the policies and production processes that should underpin it. Diana Bentley talks to Struan Robertson, legal Director of Pinsent Masons, and Nicholas Lakeland, employment law partner of Silverman Sherliker, about the new draft standard**

### **Analysis**

A first draft standard on the accessibility of websites was issued in December 2008 by the standards body BSI and it attracted an unprecedented amount of interest.

Now it has been extensively revised in response to the comments made on the 2008 draft and also to developments in technology and in legislation--namely the Equality Act 2010, due to come into force across the UK in October 2010.

The new draft standard explains how organisations can identify and remove barriers that prevent the disabled and the elderly from using websites. The draft has been issued for public consultation and comments are invited up to the end of June 2010. The new standard is expected to come into force in November 2010.

IT lawyers and employment lawyers, business owners, marketing managers, HR managers and web managers should all be taking a keen interest in the proposed new standard, says Struan Robertson, legal director of Pinsent Masons, and Nicholas Lakeland, Employment Law Partner of Silverman Sherliker, talking to Diana Bentley.

The issue for lawyers and their clients arising from the new draft is that failure to make websites available to the disabled and the elderly may result in claims under anti-discrimination legislation. The draft refers to the Equality Act 2010 and the Disability Discrimination Act 1995 (DDA)--which will remain in force in Northern Ireland.

The BSI is also alerting organisations as to how failure to provide access to websites through various outlets could leave them in breach of the new standard. New forms of accessing websites--like mobile phones,

internet tablets, games consoles and televisions--are addressed under the standard. When an organisation makes its website available on a particular platform, it should ensure it is available to disabled users on that platform to avoid potential claims.

Thankfully, as a non-technical standard, it is designed to help organisations avoid litigation. "The Standard exists to help organisations build accessible websites. At the moment there's little guidance for people at management level--like marketing managers on how that should be achieved," says Robertson.

Some disabled and elderly people face particular barriers in using websites. The problem, says Robertson, is that although there may be relevant standards to help overcome them they are particularly technical. In the case of the blind, the Web Content Accessibility Guidelines 1999 of the W3C, set out standards to convert text into audio material but they only make sense to those with particular technical ability like web developers and few others, he says.

Now, there will be more guidance on how the standards can be realised in practice--including getting disabled users to test the sites. "Making the standards understandable to people other than IT managers will help ensure IT personnel are keeping abreast of developments and duties regarding the disabled," says Nicholas Lakeland. So far there have been no judgments relating to websites under the DDA but Lakeland cautions: "The introduction of new standards means that the onus is put on organisations to show they have tried to comply with them in providing their goods and services. Bear in mind too that many businesses are now totally web based."

Both Lakeland and Robertson agree that expectations on compliance are likely to be reasonable. "There should be an understanding that websites cannot be made to be accessible overnight," says Robertson. "But organisations should be putting in place processes that will allow them to achieve accessibility." The new standard should help in developing that process he insists. "If an organisation can demonstrate that it has followed the standard it will be likely to help it in the event of any claim against it."

Lakeland agrees but adds the following warning: "There are bound to be some test cases under the new Equality Act concerning web accessibility at some stage. Various organisations involved with the disabled will take someone on and organisations, particularly large profile organisations, may get caught out if they are not complying with new standards."

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