

Feeling Excluded at a Concert

More and more cinemas and performance venues are including wheelchair spaces in their seating plans, allowing wheelchair users to watch art shows and entertainment events alike. However, they remain limited in number and are often confined to a small area, leaving wheelchair users with not much of a choice.

The Complaint

Claire is a wheelchair user. Reading online that her favourite band would be having a concert soon, she made a date with a friend to go see it together. When the organiser first announced the ticket prices, they didn't specify which ones applied to wheelchair spaces. Only until they released the seating plan did Claire find out that there was only one ticket option available for wheelchair users, and all the seats were confined to an area designated as the "Wheelchair Zone".

Claire and her friend decided to pick seats in another zone, which were more expensive but also accessible as they were located on flat ground. Unfortunately, on the day of the concert, staff of the organiser denied them admission to the seats they bought, citing safety concerns. They were directed to the Wheelchair Zone and given a refund of the price difference. To their disappointment, there were mill barriers in front of the zone, blocking their sight.

★ What the EOC did

Claire lodged a complaint with the EOC under the Disability Discrimination Ordinance (DDO), alleging that the organiser (the Respondent) had discriminated against her on the ground of her disability by confining all wheelchair spaces to one area in the seating plan, in effect providing her with much fewer options than those available for non-wheelchair users. Further, given that the venue was all flat land, she believed that there were no environmental constraints preventing the organiser from providing wheelchair spaces across different zones in the first place.

The parties reached a settlement following investigation and conciliation by the EOC. The Respondent agreed to issue a written apology to Claire and, starting from three months after the date of the conciliation agreement, undertake the following in relation to any new event the Respondent is contracted to organise and plan: (i) providing information on barrier-free seats (including prices, locations and enquiry contacts) in publicity materials; (ii) distributing wheelchair spaces across different zones in the seating plan; and (iii) reminding staff members to be mindful of their attitude towards wheelchair users and enhancing their awareness of accessibility issues.

✦ Points to Note:

- Under section 6 of the DDO, disability discrimination occurs when a person with a disability is, on the ground of his/her disability, treated less favourably than a person without a disability.
- Under section 9 of the DDO, a person is deemed to discriminate against another person on the ground of his/her disability if the former treats the latter less favourably because of the fact that the latter is accompanied by or in possession of an auxiliary aid used by him/her (e.g. a wheelchair).
- Section 26 of the DDO makes it unlawful for service providers to discriminate against a person with a disability in the conditions or manner in which they provide the relevant service, unless not doing so would impose unjustifiable hardship on the service provider.
- What constitutes unjustifiable hardship is to be determined by reference to all relevant circumstances of the case, including: the reasonableness of the accommodation to be made available to the person with disability; the effect of the disability concerned; the financial circumstances of and the estimated amount of expenditure (including recurrent expenditure) required to be made by the service provider claiming unjustifiable hardship; and the nature of the benefit likely to accrue, or of the detriment likely to be suffered by any persons concerned.
- In this case, wheelchair users are likely to suffer less favourable treatment because of the seating arrangements by the concert organiser, which give non-wheelchair users a much wider range of seat options. Also, the organiser may be unable to claim unjustifiable hardship as a defence since the venue, being on flat land, could have allowed the inclusion of wheelchair spaces

across different zones. The arrangements therefore may constitute unlawful disability discrimination.

- Event organisers are advised to accommodate the needs of people with disabilities and other communities as far as practicable, beginning from the early stages of event planning. This would help to ensure compliance with the law, as well as expand the customer base and facilitate business growth.