

Equality Commission

FOR NORTHERN IRELAND

Equality law – A guide for the tourism sector

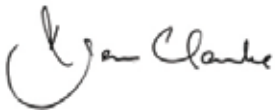


Foreword

NITB welcomes this helpful document published by the Equality Commission for the tourism industry.

These are exciting times for tourism in Northern Ireland- we are becoming a highly desirable destination, with recognition, accolades and commendation in international travel publications. As a result, the industry has established itself as a driving force for our economy and the latest statistics underline how important tourism is for our future. The revenue generated by tourism has almost doubled since the 1990's and more and more visitors are arriving to our shores.

Even with growth, tourism in Northern Ireland still has huge potential. There is growing recognition that tourism is everyone's business and a belief that we must continue to deliver unique visitor experiences.



Alan Clarke
Chief Executive
Northern Ireland Tourist Board



Contents

Introduction	3
The business case for equal opportunities in service provision for visitors	4
Which tourism service providers must not discriminate?	6
Who is protected from discrimination?	6
What is discrimination?	7
Victimisation	9
Harassment	9
Making reasonable adjustments for disabled people	10
What is “reasonable”?	12
Discriminatory advertisements	12
Responsibilities for the actions of employees	13
Exceptions	13
Good practice recommendations	14
Looking for more information?	16

NOTE: This guide does not attempt to describe in detail the various pieces of legislation and should not be taken as an authoritative statement of the law.

Further information is available from the Equality Commission. Details of how to contact us are available at the back of this booklet.



Introduction

This publication seeks to provide those working in the tourism sector with guidance on their responsibilities under equality laws. It aims to demonstrate how meeting legal requirements not only ensures compliance with the law but can also enhance customer service. In doing so, it encourages the sector to adopt an approach to equality that incorporates action to prevent discrimination and promotes equality for customers.

Equality legislation prohibits service providers from discriminating against or harassing customers or potential customers on the following grounds:

- Disability¹
- Sex²
- Pregnancy or maternity³
- Gender reassignment⁴
- Religious belief⁵
- Political opinion⁶
- Race, colour, nationality, ethnic or national origins, belonging to the Irish Traveller community⁷
- Sexual orientation⁸.

By complying with anti-discrimination laws the tourism sector can adapt and develop new services to meet their customers' needs and happy customers mean thriving business. The implications of failing to do so can result in litigation, financial costs, bad publicity and loss of reputation.

¹Disability Discrimination Act 1995 (as amended)

²Sex Discrimination (NI) Order 1976 (as amended)

³Sex Discrimination (NI) Order 1976 (as amended)

⁴Sex Discrimination (NI) Order 1976 (as amended)

⁵Fair Employment and Treatment (NI) Order 1998 (as amended)

⁶Fair Employment and Treatment (NI) Order 1998 (as amended)

⁷Race Relations (NI) Order 1997 (as amended)

⁸Equality Act (Sexual Orientation) Regulations 2006 (as amended)

The business case for equal opportunities in service provision

It is widely accepted that equal opportunities in service provision makes good business sense. This has been recognised by the Employers' Forum on Disability in its publication *Realising Potential: Disability Confidence Builds Better Business*⁹ published in conjunction with multinational companies. Businesses that are able to attract diverse customers will broaden their customer base and gain competitive advantage. Many businesses have realised that they can utilise equality to improve quality, for example, the retail industry has customised its products with adapted trolleys and large signage which helps people with visual impairments and older people.

There are 650 million disabled people worldwide.¹⁰ One in four people in Northern Ireland has a disability and that does not include their carers who account for 185,000 people in Northern Ireland.¹¹ It is estimated that there will be 400,000 carers in Northern Ireland by 2037.¹²

The General Accounting Office reported in the United States that implementing the access provisions of the Americans with Disabilities Act has increased revenues in the hotel and hospitality industry by 12%.¹³

Research¹⁴ carried out by Out Now estimated that gay and lesbian citizens earn over £70 billion a year in Britain. Coupled with the fact that gay and lesbian households have fewer children, this means that this section of the community has a greater disposable income to spend.

In 2003 a report¹⁵ by the Institute of Practitioners in Advertising estimated that black and minority ethnic groups had a disposable income of £32 billion.

⁹Employers' Forum on Disability, www.efd.org.uk

¹⁰Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities, available at www.equalityni.org, Policy section

¹¹Northern Ireland Census, 2001, Table CAS025(NI), NISRA

¹²Carers Northern Ireland, Ten facts about caring in Northern Ireland www.carersni.org

¹³General Accountability Office, cited on the DBTAC Mid Atlantic ADA website

¹⁴Diva and Gay Times Readers' Survey, January 2006, carried out by Out Now

¹⁵Ethnic Diversity Report, 2003

Visitors to Northern Ireland spent around £321million in 2009 and domestic tourism contributed a further £190 million to the economy.¹⁶

Reasons for adopting equality as a core principle in an organisation are:

- to be an employer which attracts the best staff;
- to retain trained and skilled staff;
- to attract a wide pool of customers, and
- to create a positive public image.

Monitoring customers or researching your visitors will help your business to identify who your visitors are and which visitors are not using your products. However, companies often neglect to ask the question: what is the cost of not monitoring customers in a competitive market? The cost can be high if organisations do not have the ability to:

- retain customers as they become older;
- be flexible if they acquire a disability or are a friend / relative of a disabled person;
- adapt to attract new customers from home and abroad who happen to belong to the protected groups.

Performance indicators, monitoring and evaluation are important for calculating the business benefits of designing products and services to meet the specific needs of all your visitors and potential visitors.

¹⁶Based on Northern Ireland Tourist Board 2009 visitor estimates.



Which tourism service providers must avoid discrimination?

Goods, facilities and services that are made available to the public or a section of the public come within the protective scope of anti-discrimination laws. This applies even if they are provided free of charge.

Tourism services include:

- accommodation – serviced and non-serviced activities including camping and caravan sites;
- activities - walking tours, cycling, horse-riding, shopping, cookery classes;
- heritage and culture - art galleries, beaches, parks, historic buildings, libraries;
- places to eat and drink - bars, restaurants, cafes;
- entertainment venues - concerts, cinemas, theatres;
- transport services;
- visitor information centres/local authorities;
- private clubs, subject to some exceptions.

This list is for illustrative purposes only and is not exhaustive.

Who is protected from discrimination?

Service providers cannot treat customers less favourably compared to others in the provision of goods, facilities and services, or the managing, letting or sale of premises, on the following grounds:

- gender (sex), pregnancy, and gender reassignment (transsexual people);
- religious belief or political opinion;
- race (including colour, nationality, ethnic or national origins, being an Irish Traveller);
- sexual orientation, and;
- disability.

It is unlawful to treat a customer less favourably because of their perceived sexual orientation, race, religion, or political opinion, including where the perception is incorrect. It is also unlawful to discriminate against someone because they associate with people of different sexual orientations, political opinions, religious belief or race. There is no legislation at present in Northern Ireland which makes it unlawful to discriminate on grounds of age when providing services although it is discriminatory in the Republic of Ireland with certain exceptions.

What is discrimination?

Discrimination is not simply unfairness. The key focus for you is to provide the same service to all visitors which is sensitive to difference.

Less favourable treatment in service provision occurs when a service provider, on one of the grounds described above:

- refuses or deliberately fails to provide a service;
- provides a service of a lower standard or quality;
- offers a service on worse terms,

which it provides to members of the public or a section of the public.

The most obvious form of discrimination occurs when a service provider refuses to serve a person or provides a lower standard of service because of a particular characteristic of a protected group. For example because they are a woman (or a man), a Protestant (or a Roman Catholic), an Irish Traveller, a member of a black or minority ethnic group or because they have a disability.

Examples

Refusal of service

A man with a facial disfigurement is refused entry to a nightclub because of the way he looks and his friends without facial disfigurements are allowed onto the premises. The doorman refuses to speak directly to him which the man believes is because of his disability.

Source: Adapted from ECNI Decisions and Settlements 2007-2008

Lower standard and manner of treatment

A small country house hotel informs a same-sex couple that they cannot have accommodation in the main hotel but must go to one of the adjacent bungalows, with inferior services, as they might cause offence to other customers in the hotel.

Fears about the reaction of other customers, whether real or apparent, are irrelevant and would not be accepted by a court as justification for an act of discrimination.

Source: Eliminating Sexual Orientation Discrimination in Northern Ireland, A Guide on the Provision of Goods, Facilities and Services, and Premises

Less favourable terms of service

A deaf blind person booking self-catering accommodation is asked for a larger deposit than is required from other customers. The owner of the accommodation believes, without good reason, that because of their disability the customer is more likely to cancel the holiday.

Source: Code of Practice: Rights of Access Goods, Facilities. Services and Premises, the Disability Discrimination Act

Worse terms

A hotel asks a Traveller family for the cost of the wedding upfront instead of a deposit which would be the norm.

Organisations should consider which policies, practices or procedures could indirectly disadvantage any groups and, if so, whether it is justifiable. Informal practices should also be considered.

Victimisation

This occurs when someone is treated less favourably because they have already made a complaint (undertook proceedings or threatened to bring proceedings) under equality legislation. They may have complained about a service provider or have helped someone else to do so or alleged that a service provider has committed an unlawful act on any of the protected grounds. The victimisation provisions do not protect people who have made false allegations or those which are not made in good faith.

Harassment

Harassment on any of the protected grounds in the provision of goods, facilities and services is prohibited. Harassment is defined in some of the anti-discrimination laws as unwanted conduct which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

Specific provisions exist under sex discrimination legislation which make an employer liable for acts of sexual harassment committed by customers.¹⁷

It would amount to harassment for a service provider, or their staff, to speak to or in front of customers using language that is sectarian, sexist, racist, homophobic or which demeans disabled people.

¹⁷Sex Equality Legislation- Update on the Provision of Goods, Services and Premises, Equality Commission, 2008

Making reasonable adjustments for disabled people

The Disability Discrimination Act requires service providers to make reasonable adjustments for disabled people. The action required will vary depending on the size and nature of the organisation, type of services being provided and whether the adjustment will remove the difficulty in accessing the service. The aim of the law is to remove the difficulty that prevents disabled people using services. This covers every aspect of the business including websites.

Service providers are expected to anticipate the reasonable adjustments which may be necessary and plan ahead to ensure that disabled people have full access to their services.

The Disability Discrimination Act requires service providers to take reasonable steps to:

- **change any policy, procedure or practice** which makes it unreasonably difficult or impossible for a disabled person, compared to a person without a disability, to make use of the goods, facilities or services in question and/or
- **provide an auxiliary aid or service** if it would enable or make it easier for disabled people to make use of its services.

Auxiliary aids might be the provision of special equipment (for example a hearing loop, a wheelchair, or a portable ramp) or extra assistance to disabled people. In some cases, a technological solution might be available. Auxiliary services include reading out a menu for a blind person or making the menu available in large print for people with visual impairments.

- **Physical features** - service providers also have to make reasonable adjustments if a physical feature makes it unreasonably difficult or impossible for a disabled person to make use of any services offered to the public.

Physical features include stairways, kerbs, entrances, doors, exits, toilet and washing facilities, lighting and ventilation, lifts, floor coverings, furniture or temporary items. This list is not exhaustive.

Where a physical feature makes it impossible or unreasonably difficult for a disabled person to access a service, the service provider has to take reasonable steps to:

- remove the feature,
- alter it so that it no longer has that effect,
- provide a reasonable means of avoiding the feature or
- provide a reasonable alternative method of making the service available to disabled people.

Service providers are more likely to be able to comply with their duty to make reasonable adjustments if they arrange for an access audit of their premises to be conducted and draw up an access policy or strategy. The results of such an evaluation, so long as its findings and recommendations are implemented, will promote equality for disabled people and may reduce the likelihood of legal claims against the service provider.

Examples

Reasonable adjustment to policy

A 'no dogs' policy may make it difficult for a person with an assistance dog to use a service. To comply with the law the service provider should not enforce the policy in respect of assistance dogs for disabled people.

Source: Code of Practice, Rights of Access to Goods, Facilities, Services and Premises. Further guidance in relation to assistance dogs can be found in Assistance Dog Owners - their rights, Employers and Service Providers - best practice, Equality Commission

Provision of auxiliary aids

A museum provides a written guide to its exhibits. It also provides an easy read guide which uses plain language and pictures to explain the exhibits. This is an auxiliary aid for people with learning disabilities.

Source: Adapted from Code of Practice Rights of Access, Goods, Facilities, Services and Premises- Disability Discrimination Act 1995

Adjustments to physical features

A library is a listed building with an inaccessible front door which cannot be removed or altered enough to ensure access for people with mobility impairments. The library avoids the physical feature by adapting the side door and this becomes the main access point for everyone using the service.

Source: Adapted from Code of Practice Rights of Access Goods, Facilities. Services and Premises- Disability Discrimination Act 1995

What is reasonable?

When making adjustments for disabled people under the Disability Discrimination Act, the law requires service providers to do what is reasonable in all of the circumstances. What is reasonable for an organisation or business to do will depend on a variety of factors, including :

- the service being delivered;
- the size of the service provider;
- the finances and resources available;
- the extent of any disruption caused by the adjustment, and;
- the amount of money spent on adjustments.

Further information can be obtained from the Northern Ireland Tourist Board about how to about how to draw up an access statement.

Discriminatory advertisements

It is unlawful for an organisation to advertise a service which is seen to be discriminatory or to advertise anything which appears to indicate an intention to discriminate. For example, this applies to advertisements that are placed in a newspaper, posters, leaflets, displays, emails and websites or in any other place.

Example

It is unlawful for the owner of a hotel or bed and breakfast premises or a person who is letting a holiday cottage, to state in their advertisement that the facilities are not available to people from black and minority ethnic groups or same-sex couples.

Source: Adapted from Eliminating Sexual Orientation Discrimination in Northern Ireland, Equality Commission

Responsibility for the actions of employees

Employers are liable for the actions of workers carried out in the course of their employment, whether the act was done with or without the employer's knowledge or approval. Under the anti-discrimination laws, if those workers commit any acts of unlawful discrimination or harassment against the users of services then the owner / employer may be held responsible in law for their actions.

It is a defence for an employer to show that it has taken reasonable steps to prevent the discriminatory treatment. This might include for example having provided equality training which relates to providing a service and/or communicated a policy on equality in relation to the provision of services. It is not a defence for the service provider to show that the action took place without its approval or knowledge.

Exceptions

Under certain limited circumstances, it is lawful to discriminate when providing services. These circumstances are usually linked to the specific nature of the service. Exceptions should always be used with caution. Advice can be obtained from the Equality Commission enquiry line on 028 90 890 890.

Good practice recommendations

Service providers are more likely to comply with their legal duties under equality legislation if they carry out the following:

- **Inform** all staff dealing with the public that it is unlawful to discriminate against people on any of the protected grounds.
- **Develop equality service policies** which are flexible to the changing needs of customers.
- **Consult** with local organisations that represent people from protected groups for feedback on their experiences of the services.
- **Communicate** all relevant policies to staff and volunteers.
- Provide regular **training and guidance** on equality awareness and service policies.
- Carry out **access audits** to identify any physical or communication barriers which disabled people using services may face and look at solutions or aids which can remove or alter these barriers.
- **Monitoring** customers may also help to demonstrate that the service is open to all.
- Ensure that all staff and volunteers are aware that any act of discrimination will be addressed through the **disciplinary procedure**.
- Include equality in any **customer complaint system** or customer suggestion schemes.
- Include **equality awareness** as a priority in appraisals for all staff and volunteers.
- **Review** whether services are accessible to all and act on any findings.

Other good practice measures which could assist staff or volunteers to become more aware of the law and discrimination faced by the various groups include:

- Ensuring **senior management or owner commitment** to building a service with equality at its heart.
- Ensuring staff are **trained to use technology**, such as text phones for deaf people.
- Looking for examples of **good practice** from other service providers in the tourism sector.

- Developing **promotional materials** which advertise specially designed products for any of the groups, and advertise any auxiliary aids or equipment for disabled people.
- Ensuring the **design of websites** comply with PAS 88 (Publicly Available Specification 88, British Standards Institution).
- Providing for **special dietary requirements**, including medical, religious and cultural. There are a number of diversity calendars which can be used to make staff aware of the different needs of visitors.
- Participating in **equality campaigns** to raise awareness amongst staff of equality issues in service provision.



Looking for more information?

The Equality Commission for Northern Ireland has a range of information and advisory services for employers, service providers, employees and the general public.

The Commission has published a number of publications in the area of goods, facilities and services which are available either to download from our website at www.equalityni.org or in hard copy:

- Disability Code of Practice: Rights of Access Goods, Facilities, Services and Premises (2003)
- Improving access to goods and services for disabled customers -A practical guide for small businesses and other small service providers (2004)
- What Service Providers Need to Know – The Disability Discrimination Act 1995 (2006)
- Organising Accessible Events- Making your conferences , events and exhibitions accessible for disabled people (2004)
- The Disability Discrimination Act 1995 – Assistance Dog Owners – Their Rights, Employers and Service Providers – Best Practice (2009)
- Eliminating Sexual Orientation Discrimination in Northern Ireland: A Guide on the Provision of Goods, Facilities, Services and Premises (2008)
- A series of five short sector specific guides on discrimination on grounds of sexual orientation in goods, facilities and services provisions in the following areas Education, Health and Social Care, Hospitality, Housing and Financial (2009)
- Sex Equality Legislation - Update on the Provision of Goods, Facilities and Services and Premises (2008)
- A series of six short guides relating to disability discrimination in accessing transport services (2010)

Useful Contacts

A list of organisations and bodies that can provide advice and information may be found on the links section of the Equality Commission's website www.equalityni.org

The Equality Commission can provide further information on a range of equality issues including advice and guidance on promoting equality in the provision of goods, facilities and services. The information is free and confidential.

The Commission can also provide training for employers and service providers. All the Commission's publications can be downloaded from the website at www.equalityni.org and are available in alternative formats if required. For further information please contact:

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