

***Article for Public Service Review May 2010  
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Laws protecting the rights of disabled people are of vital importance to a great many people in our community, and the Equality Commission for Northern Ireland is continually working to ensure their effectiveness. There have recently been some very positive developments on this front – an important clarification by the courts of the terms defining disability, the extension of protection for disabled people to many forms of transport which were previously exempt and the ratification by Government of the United Nations Convention on the Rights of People with Disabilities.

If a person is accepted as being a “disabled person” under the terms of the Disability Discrimination Act 1995, their employers must in certain circumstances make “reasonable adjustments” for them. If they do not meet the definitions in the Act, no such requirement is made of the employer.

A case recently brought to a resolution with the assistance of the Equality Commission has clarified the law, increasing protection from discrimination to people with a range of health conditions where symptoms can be managed or may fluctuate.

Elizabeth Boyle, a woman from Warrenpoint in County Down, received a settlement of £125,000 from her former employer, SCA Packaging Limited. She had had difficulties with her vocal chords since 1974. Her condition required surgery, speech therapy and a strict management regime to ensure the problems did not recur. At a time when she was following her health management regime rigorously and was symptom free, her employer proposed changes which she felt might undermine her very strenuous efforts to protect her voice and safeguard her health.

In October 2001 she began proceedings under the Disability Discrimination Act alleging discrimination on grounds of her employer’s failure to make reasonable adjustments for her disability. This resulted in a series of court actions in the course of which the Northern Ireland Court of Appeal made a significant ruling, subsequently upheld by the House of Lords, which changed the previously accepted interpretation of the key word “likely” as used in the Disability Discrimination Act 1995.

The Act specifically includes protection for people in circumstances where, even though an impairment has ceased to have a substantial adverse effect on them it is “**likely to recur**”.

The decision by the Northern Ireland Court of Appeal, upheld by the House of Lords, centred on the meaning in this context of the phrase “**likely**”. Where it had previously been held to mean that the substantial adverse effect was “**more probable than not**”, this new interpretation now establishes that it should be read in the sense of “**could well happen**”.

Under the previous interpretation, an employer could possibly decide to take no steps to accommodate special measures being followed by the employee, unless the risk of recurrence of her condition could be shown to be more probable than not. This ruling means that it is sufficient to establish that, were a person’s treatment regime to be disrupted, disabling effects could well recur. This would then carry with it a requirement of reasonable adjustment on the part of the employer.

The change is important for people with conditions such as, for example, diabetes, epilepsy, rheumatoid arthritis or multiple sclerosis.

The legal distinction being contested in a case such as this can often appear very narrow. In this case, however, it has a great importance to disabled people in that it will be easier for claimants to establish that they are entitled to the protection conferred by the Disability Discrimination Act.

In a further development of benefit to disabled people, new Regulations have been introduced in January this year giving additional legal protection against discrimination to disabled people in Northern Ireland using various forms of transport.

The Disability Discrimination Act 1995 has not, up to now, applied to the provision of transport vehicles, and people could not rely on the Act if they were refused access to public transport such as buses or trains for a reason related to disability.

The Disability Discrimination (Transport vehicles) Regulations (Northern Ireland) were introduced in January 2010 and now make it unlawful for transport providers to refuse service or to provide service of a lower standard or on worse terms to a disabled person for a reason related to disability. Transport providers will also be under a legal duty to make alterations to their existing services to make them accessible to disabled people.

Any person who meets the definition of disability in the Disability Discrimination Act is covered by the legislation. It is important that transport providers do not

make assumptions about whether or not someone is disabled or the extent of someone's disability.

The Regulations apply to trains, to buses and coaches, to taxis, vehicle rental and breakdown services. Companies and people providing these services should plan ahead to make sure arrangements are in place to ensure they are not discriminating against anyone for a reason related to disability.

That can range from rail and bus companies making sure its timetables and leaflets are available in alternative forms such as Braille and audio tape, to help passengers with visual impairments, through to taxis making sure they have a pen, paper or maps to help communication with a person with hearing difficulties, or a mobile ramp to allow wheelchair users board an accessible taxi.

Often, what the transport provider needs to do will be a matter, not of equipment, but of the knowledge and readiness of the frontline staff to deal with people with disabilities seeking to use their service. Companies should ensure that all their staff are trained in their responsibilities under the Disability Discrimination Act for recognising and dealing with disabled passengers and, where there are practices which prevent or deter disabled people from using the service, they must address the issue and change the policies and practices.

Examples would be ensuring that drivers on buses do not pull away sharply from bus stops, before people who may have mobility disabilities have had time to sit down. Or, where a breakdown operator offers alternative transport to members to bring them from the scene of a breakdown free of charge, they should not charge extra for arranging alternative transport for a wheelchair user who can not access the recovery vehicle.

There is now a duty on transport providers to make reasonable adjustments to make their services more accessible to disabled people. An example would be for a train company to offer a seat in a first class carriage (which has more legroom) without extra charge to a person who is accompanied by an assistance dog on a crowded train. This is to allow more room for the disabled person and the dog. It is a reasonable adjustment and is within the law.

Another example would be for a breakdown operator to give priority to a customer who explains he is becoming afraid he will not get home in time to take regular medication needed for a heart condition, rather than placing him in their usual "first come first served" waiting list.

The legislation applies to different transport providers and operates for the benefit of people with different types of disability. The Equality Commission has produced short guides for each of the transport sectors affected by the legislation and provides free advice for people who believe they may have been discriminated against. We offer legal assistance in some cases and can also

arrange for independent conciliation for disputes, with a view to promoting the settlement of such disputes otherwise than through the courts.

Finally it is of note that the UK Government ratified the UN Convention on the Rights of People with Disabilities (UNCRPD) in June 09. This is an international human rights treaty which sets the bench mark for the human rights of disabled people against which countries, including the UK, will be measured. It applies to all disabled people and covers all areas of life including access to justice, personal mobility, health, education, work and recreation. The Convention sets a new context for the rights of people with disabilities and Government will have to take it into account in policy making. The Equality Commission, jointly with the NI Human Rights Commission, has responsibility as an independent mechanism for the implementation and monitoring of the UNCRPD in Northern Ireland.