

Avoiding disability discrimination in transport

A short guide for breakdown recovery operators in Northern Ireland



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The Equality Commission for Northern Ireland is responsible for equality legislation and provides a wide range of services to the public, employers and service providers including information on all aspects of the law. Our contact details are provided at the back of this leaflet.

This publication gives general guidance for transport providers and disabled people and should not be treated as an authoritative statement of the law.

Disability Discrimination Act, as amended by the Disability Discrimination (Transport Vehicles) Regulations (Northern Ireland).



Introduction

This booklet is aimed at helping breakdown recovery operators to ensure that they are complying with their legal obligations under the Disability Discrimination Act, as amended by the Disability Discrimination (Transport Vehicles) Regulations (Northern Ireland) (DDA). However, it is recommended that the operators read the Equality Commission's Code of Practice on the Provision and Use of Transport Vehicles and Code of Practice on Rights of Access, Goods, Facilities, Services and Premises for a full explanation of the legal duties on transport providers.

Disability discrimination legislation makes it unlawful for organisations which provide services to the public to discriminate against disabled people in the way in which they provide or do not provide those services. This includes transport providers.

All transport providers have duties under disability discrimination law in relation to transport infrastructure such as their buildings and information services. They also have duties in relation to the provision and use of the vehicles they provide.

The legislation makes it unlawful for transport providers to refuse or deliberately fail to provide a service to a disabled person. They must also make "reasonable adjustments" to take away or overcome elements in their services which present barriers to disabled people.

What does the law define as a breakdown recovery vehicle?

The law defines breakdown recovery vehicles as those deployed by a breakdown or recovery operator, whether or not a third party or sub contractor is used. The purpose of these vehicles must be to transport the driver and occupants of a broken down vehicle from the scene of an accident or breakdown. A breakdown or recovery operator means the provider of roadside assistance services for the purpose of recovering or repairing a broken down vehicle.

Who is protected?

Any person who meets the definition of disability in the Disability Discrimination Act 1995 is covered by the legislation. That is someone who has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.

Some disabilities may be visible, but others may not be immediately obvious, such as mental ill health or epilepsy and this should be kept in mind by the breakdown operator. It is important that breakdown operators do not make assumptions about whether or not someone is disabled or the extent of someone's disability.

While making an application for a breakdown operator's membership scheme a customer discloses that they have a physical disability. The breakdown operator assumes that this means that the customer is unable to drive and asks for proof from the person's doctor that they are able to drive. This could be discrimination as the breakdown operator has made an assumption about the extent of the person's disability. A disabled person should be assessed in the same way as any other customer and if the person has a driving licence this should be sufficient proof that they are able to drive.



The breakdown operator should concentrate on the needs of disabled people and should consider the service they provide and determine how they could make it more accessible for disabled people.

A breakdown operator reviews their services and decides to use SMS text messaging as an option to communicate with people with communication impairments. The customer can text the operator if their car breaks down and the operator will text back to get the necessary information to deploy a breakdown vehicle to the location. The breakdown operator publicises this service on their website and ensures that their staff members promote the service to anyone with communication impairments. This makes it easier for a person who is deaf or hard of hearing to access the service.

It may be useful for the operator to ask a standard question of all callers in order to find out if there are any disabled people in the vehicle who may require special assistance.

A wheelchair user calls their breakdown operator to report a breakdown. A note was added to their account upon applying for membership to say that the customer is disabled and to remind the operator to ask about special requirements. The operator determines that the car may not be repairable on site and that if the vehicle needs towed the customer cannot transfer from their car to the recovery vehicle. The operator informs the sub contractor that an accessible taxi will be arranged and that the breakdown operator will pay for the taxi. The system of adding a note to the account reminding the operator to ask about special requirements has enabled the breakdown operator to ensure that their service is accessible for this customer.

What is disability discrimination?

Less favourable treatment

Disability discrimination occurs when a transport provider treats a disabled person less favourably because of their disability and cannot show that this treatment is justified. Even if it is unintentional, this behaviour can still amount to discrimination. For example:

In a breakdown recovery operator's membership agreement there is a clause which states that the operator will not charge for bringing a customer from the scene of a breakdown or accident in a recovery vehicle. The operator arranges for alternative transport for a member who is also a wheelchair user and charges them extra. This would be discrimination as the breakdown operator is treating the disabled customer less favourably because of his or her disability.

Reasonable adjustments

Transport providers can also discriminate if they fail to make a "reasonable adjustment" to make their services more accessible to a disabled person. Transport providers should not wait until a disabled person wants to use their services before they give consideration to their duty to make reasonable adjustments. Transport providers should be planning continually for the reasonable adjustments they need to make, whether or not they already have disabled customers or passengers. They should anticipate the requirements of disabled people and the adjustments that may have to be made for them.

The operator may have to change a **policy, procedure or practice**.



A deaf customer's car breaks down and she contacts a breakdown company of which she is a member. As part of the customer's membership package she gets free transport to her home in the event that their vehicle cannot be repaired by the roadside. The operator of the repair vehicle cannot repair the vehicle at the roadside and has to tow it to the nearest garage. Before he leaves to tow the vehicle the operator tells the customer, who has an assistance dog, that the organisation has a policy of not allowing animals in their recovery vehicles, despite the vehicle having adequate room, and advises the customer to order a taxi or arrange alternative transport. This may amount to discrimination, even if it is unintentional, as the operator has not made a reasonable adjustment to its policy to enable the disabled customer to access the service.

In the above example, the operator of the breakdown recovery vehicle could agree to change the policy of not accepting animals in his or her vehicles for this customer as the dog is an assistance animal. In this example, if there was no room in the vehicle for the assistance dog the operator should still make a reasonable adjustment by arranging for a taxi to pick up the disabled passenger and the dog. If a policy, procedure or practice discriminates against a disabled person the breakdown recovery operator should consider how they can alter or change the policy to ensure that the disabled person is not discriminated against.

A breakdown operator has a practice of placing customers in a queue on a "first come first served" basis. A motorist calls the operator to report a breakdown and explains that she has a heart condition which requires regular medication. The motorist is afraid that if she does not get home to take her medication in time, there could be serious medical side effects. The operator places this caller at the top of the queue for assistance. This would be a reasonable adjustment for the operator to make.

The operator may have to **provide an auxiliary aid or service**. This would include, for example, the provision of an SMS text messaging service for customers with communication impairments.

Where a **physical feature** makes it impossible or unreasonably difficult for disabled people to make use of a service in respect of the provision or use of a breakdown recovery vehicle, a transport provider must take reasonable steps to provide a reasonable alternative method of making the service available to disabled people.

A breakdown recovery operator sends a vehicle to assist a disabled motorist whose car has broken down on his journey home. On arrival, the breakdown recovery representative discovers that the broken-down car cannot be repaired immediately and must be towed away. The terms of the motorist's breakdown contract provide for him to be taken on to his destination in the event of a breakdown that cannot be resolved on site. The breakdown recovery operator would usually expect to comply with these terms by transporting customers in the cab of the recovery vehicle. The cab has steps leading up to it, which constitute a physical feature. However, the motorist has a mobility impairment and cannot climb up the steps into the cab. The breakdown recovery operator therefore orders an accessible vehicle, perhaps a suitable taxi, to take the motorist home at no extra charge. This is provision of a service by an alternative method and is likely to be a reasonable step for the breakdown recovery operator to have to take.

When can a transport provider justify less favourable treatment or a failure to make reasonable adjustments?

In limited and specified circumstances, a transport provider can justify less favourable treatment or a failure to make reasonable adjustments. However, this cannot be used as a reason for a general exclusion of disabled people from access to services. They include, for example, health and safety. Please see the Code of Practice for further details.



What can breakdown recovery operators do to avoid discrimination?

Chapter 2 of the Code of Practice on the Provision and Use of Transport Vehicles gives more detail on how an operator can minimise the risk of disability discrimination. This Chapter, as well as the whole Code, should be read in order to minimise the incidence of expensive and time-consuming litigation.

1. An operator must **plan** for disabled customers. They should audit all the services and think at every stage about the disabled customer's journey and possible barriers to disabled customers, from becoming a member, contacting the organisation on the telephone or via the website, accessing any premises and the actual delivery of a breakdown recovery service. Once barriers have been identified, the organisation should look at what they can do to remove the barriers so that they can provide the optimum service to disabled passengers.
2. An operator should include a **review** of disability equality each time any of the organisation's services are reviewed or evaluated.
3. Breakdown recovery operators should keep up to date with **technological developments** to ensure that they are providing all of the solutions possible to prevent barriers to disabled people using the breakdown recovery service.
4. It is essential that breakdown recovery operators **listen** to customers. They should consult disabled customers to see how the services can be made more accessible and listen to customer complaints. If complaints are received about disability discrimination or services being difficult to access for disabled people, a breakdown recovery operator should review these services and see how they can be changed and consider any reasonable adjustments that can be made.
5. The operator should ensure that it has a positive **policy** on the provision of services to ensure inclusion of disabled people and this should be communicated to staff. The

operator should make sure that staff are aware of the consequences of potential breaches of this policy and address acts of disability discrimination by staff as part of disciplinary rules and procedures.

6. The implementation of all equality policies should be **monitored**.
7. Disability awareness and disability equality **training** should be provided for all staff. As the breakdown recovery operator is responsible for the actions of its employees in the course of their employment, it is important that it ensures that all staff members are trained to assist disabled passengers. All training should be relevant, up-to-date and provided on a regular basis.
 - Staff members should be given an overview of their obligations to disabled passengers.
 - They should be trained on how to assist disabled people, this should include training on how to assist people who may not be obviously disabled, who may have epilepsy or a heart condition.
 - Staff members should be trained not to assume that people need help but to ask if a passenger requires help before giving it.
 - Staff should be trained in the safe operation of any equipment.
 - Ensure that all staff members know how to communicate with passengers with learning difficulties or speech impairments and passengers with hearing impairments for example telephone operators should be aware of Typetalk, a service that lets deaf and hard of hearing people use a textphone to communicate, the telephone operator acts as an intermediary between the callers.
 - Instruct staff on what to do in an emergency in terms of disabled passengers.



8. Breakdown recovery operators must have a customer complaints procedure which is easy for disabled people to use. It is essential that transport providers deal effectively with all complaints of disability discrimination. Disability discrimination complaints should be dealt with promptly, seriously, sympathetically, confidentially and effectively. By dealing with complaints in this way, transport providers are reinforcing their message that they consider complaints of disability discrimination a serious matter.

How can we help?

The Equality Commission can provide advice, guidance and training on complying with the legislation. For more information please contact:

The Equality Commission for Northern Ireland

Equality House
7 – 9 Shaftesbury Square
Belfast
BT2 7DP

Telephone: 028 90 890 890 (enquiry line)
Fax: 028 90 248 687
Textphone: 028 90 500 589
Email: information@equalityni.org
Website: www.equalityni.org

You can also use Typetalk to contact us.

This guidance is part of a series relating to disability discrimination and the provision and use of transport vehicles comprising:

Your rights when accessing transport services in Northern Ireland

A short guide for bus and coach operators

A short guide for rail operators

A short guide for taxi operators

A short guide for vehicles rental operators

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