

# Avoiding disability discrimination in transport

Your rights when accessing transport services in Northern Ireland



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This publication gives general guidance for 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).



The Disability Discrimination Act (DDA) aims to eliminate discrimination against disabled people. The purpose of this guide is to describe the rights under the DDA which disabled people have when accessing transport services.

## Which transport services are covered by the DDA?

- Services associated with transport infrastructure and timetabling, or services at stations or ports.
- Transport services provided through the use of the following types of vehicle are covered, subject to some exceptions (details of which can be found at page 10).
  - Buses and coaches
  - Taxis
  - Trains
  - Rental vehicles
  - Breakdown recovery services.

## Who is protected?

Any person who meets the definition of disability in the DDA 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. The DDA also specifically covers anyone who has cancer, HIV or multiple sclerosis. A person is protected from discrimination if they no longer have a disability.

## What is disability discrimination?

Discrimination, as it relates to the provision of transport services occurs when a transport provider:

- **refuses** to provide (or deliberately fails to provide) any service which it offers or provides to members of the public;
- provides a service of a **lower standard** or in a **worse manner**;
- provides a service on **worse terms**; or
- fails to make a **reasonable adjustment** if that failure has the effect of making it impossible or unreasonably difficult for the disabled person to make use of the service and cannot show that the failure is justified.

## Refusal of service

A bus tour operator offers sightseeing bus tours to the public. However, one prospective passenger is refused access to the tour because he has cerebral palsy. Despite explaining that he has this condition, the bus tour operator will not allow him to join the tour. No other passenger is refused access. This would amount to less favourable treatment for a reason related to disability and, unless the bus tour operator can justify its actions, would be an unlawful refusal of service contrary to the DDA.

Without making further enquiries or considering the issues involved, a vehicle rental operator refuses to hire a vehicle to a disabled person, arguing that a nearby larger vehicle rental operator can offer a better service to disabled people. This is a refusal of service for a reason related to a disability and is likely to be unlawful.

The driver of a 'door to door' transport service deliberately fails to pick up a member of the scheme despite her having booked the service. The member is blind and uses an assistance dog and the driver does not like having animals in the vehicle. He therefore ignores her booking. This is likely to be unlawful.



## Lower standard of service

A train manager tells a person with a severe facial disfigurement that he must sit in an empty part of the train, away from other passengers. This is likely to be unlawful.

A breakdown recovery operator addresses a customer with a mobility impairment in derogatory terms related to their disability. This is likely to be unlawful.

## Worse terms

A disabled person has booked a taxi. When the taxi arrives, the driver asks the disabled passenger to pay the journey fare in advance, something which he would not require from other passengers. This is likely to be unlawful.

A vehicle rental operator charges a disabled person more than a non disabled person for hiring a car as they assume that the disabled person is more likely to have a car accident. The vehicle rental operator is treating a disabled person less favourably because of their disability. If, however, the operator can show that they are charging the disabled person extra because the person has had a number of accidents in a short period of time, they may be able to justify charging more. This would not be discrimination as the operator is levying an extra cost because of the person's driving record and not their disability.

A taxi driver with an accessible seven seat vehicle charges all users a higher fare than that charged by drivers of five seat vehicles, regardless of whether they have a disability. This is likely to be within the law as the driver is not treating people with a disability differently.

## Reasonable adjustments

When a transport provider offers services to the public it has a legal duty to take reasonable steps, depending on all the circumstances of the case to make its services available to disabled people.

The duty falls into three distinct areas:

- Changing **policies, practices or procedures**.
- Providing **auxiliary aids and services**.
- **Overcoming a physical feature** by removing it, altering it or providing services by alternative methods.

**All** transport providers have a duty to take reasonable steps to:

- Change a **policy, practice or procedure** which makes it impossible or unreasonably difficult for a disabled person to make use of those services.
- Provide an **auxiliary aid or service** if it would enable, or make it easier for, disabled people to make use of those services.

An **auxiliary aid or service** is, for example, a special piece of equipment (such as a portable wheelchair ramp) or simply extra assistance to disabled people from staff. Equipment should be properly maintained and what is an appropriate aid or service will vary according to the type of transport provider, the nature of the services being provided and the requirements of the disabled passengers or potential passengers. Auxiliary aids and services are not limited to aids to communication.

Transport providers are not required to make permanent alterations to the physical fabric of the vehicle either internal or external (although there is nothing in the DDA to prevent them from doing so).



The duty to overcome a **physical feature** applies only in the following circumstances:

- **Rental vehicles** with no more than eight seats in addition to the driver's seat. The transport provider must overcome a physical feature which makes it impossible or unreasonably difficult for disabled people to use the service by:
  - Removing or altering the feature,
  - Providing a reasonable means of avoiding it
  - Providing a reasonable alternative method of making the service available.

The Act defines a physical feature as any part of the vehicle that requires:

- alteration in order to allow for hand controls to enable a disabled person to operate braking and accelerator systems for the vehicle.
- Alteration to allow for facilities for stowing a wheelchair.

Fixed seating and in-built electrical systems are not treated as physical features, so there is no obligation to alter these features.

- **Breakdown recovery vehicles** – the transport provider must overcome a physical feature which makes it impossible or unreasonably difficult for a disabled person to make use of that service. The duty extends only to providing a reasonable alternative method of making the service available.



## Policies, practices and procedures

A bus operator learns that several of its drivers regularly adopt the practice of pulling away sharply from bus stops before passengers have had the chance to sit down if they are able to do so. The effect of this practice is to make it unreasonably difficult for disabled people with mobility difficulties to use its buses, due to anxiety about falling. The bus operator instructs its drivers to wait, whenever possible, until passengers have found seats before pulling away from bus stops. Although it may not always be possible to achieve this, for example if the bus is crowded, if the bus operator ensures that its drivers adopt this practice as a matter of policy whenever it is possible to do so, this is likely to be a reasonable step for the bus operator to have to take.

A coach operator has a policy of allowing only one piece of luggage per passenger to be stowed in the hold of its coaches. A disabled wheelchair user has a suitcase with her. Since she is able to transfer to a coach seat, she wishes to stow her folding wheelchair, as well as her suitcase, in the hold. However, the coach operator decides that the wheelchair constitutes 'a piece of luggage' and refuses to allow the stowage of both items in the hold. The effect of this refusal is to make the journey impossible for the disabled wheelchair user, since there is insufficient room for either item in the body of the coach. The express coach operator's failure to amend its luggage policy is likely to be unlawful.

A breakdown recovery operator has a policy of not allowing dogs in its vehicles. In cases where it is necessary for a broken-down vehicle to be towed from the scene by a representative of the breakdown recovery operator, the procedure is for occupants of the broken-down vehicle to be transferred to the cab of the breakdown recovery vehicle, but for any dogs to be left in the vehicle to be towed. The 'no dogs' policy is enforced in practice by this procedure. However, an assistance dog is trained to accompany the disabled person using it at all times, so both the dog and its owner can find a separation of this sort traumatic. In these circumstances therefore, the policy makes it unreasonably difficult for disabled people accompanied by an assistance dog to use the breakdown recovery service. The breakdown recovery operator decides to amend its 'no dogs' policy by allowing an exception for disabled passengers accompanied by an assistance dog. It





also decides to publicise this amended policy in its promotional materials. These are likely to be reasonable steps for the breakdown recovery operator to have to take.

## Auxiliary aids and services

A disabled wheelchair user waits at a taxi rank. A taxi arrives which is accessible to wheelchair users via a portable manual ramp. However, when the driver takes the ramp out of the boot (where it is stored when not required) he discovers that it is damaged and cannot be used. Although the taxi driver has provided an auxiliary aid, his failure to check that the ramp is in working order means that the taxi may be found to have failed to take reasonable steps in all the circumstances.

There is almost always a gap between a train and a platform. A train operator provides a suitably chosen portable ramp which helps disabled people with a mobility impairment to board and alight from its trains safely. This is the provision of an auxiliary aid and is likely to be a reasonable step for the train operator to have to take.

## Physical features

A vehicle rental operator provides a service of installing hand controls in its vehicles to make them accessible to drivers who have restricted leg movement. However, this does not assist drivers who require pedal extensions rather than hand controls in order to be able to drive. The vehicle rental operator will need to consider the requirements of these customers also.

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 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.

The limited circumstances are:

1. Health or safety;
2. The disabled person being incapable of entering into a contract;
3. The transport provider being otherwise unable to provide the service to the public;
4. Enabling the transport provider to provide the service to the disabled person or other members of the public;
5. The greater cost of providing a tailor-made service.

If the reason is not listed above, then the less favourable treatment or failure to make reasonable adjustments cannot be justified.



## Transport services which are not covered

The transport provisions of the DDA do not currently apply to all transport services. The following describes services which are not covered:

1. The DDA does not cover aircraft and shipping vessels, apart from matters such as timetables, booking facilities and waiting rooms at airports and ferry terminals. However, a European Union Regulation places legal obligations on airport operators and air carriers, their agents and tour operators when providing services to people with disabilities or reduced mobility. For further information on this European Regulation contact the Consumer Council for Northern Ireland.
2. Vehicles granted a certificate of exemption issued by the Department of the Environment, including:
  - Small school buses provided by an Education and Library Board to carry children to and from schools;
  - Ambulances used to carry people to and from hospitals; and
  - Vehicles used to carry guests to and from hotels.
3. Vehicles exempted from licensing requirements, through the issuing of a permit, under Section 10A of the Transport Act 1976. A permit can be granted in relation to small or large buses run by non profit-making organisations which are concerned with education, religion, social welfare, or other activities of benefit to the community.

The types of transport services affected are likely to include:

- Non commercial bodies such as religious organisations, schools, sports clubs and other voluntary groups can be issued with a permit.

- Buses funded by the Department for Regional Development under the rural transport fund are exempt, as the scheme is non-commercial.
- Large school buses which are funded by the Department of Education.
- Buses used by health boards.
- Buses used by commercial organisations to carry children to and from nurseries or after school care.

### What can I do if I believe I have been discriminated against?

Where a disabled person believes that they have been discriminated against, they can bring a claim against the transport provider in the County Court.

Court action must be brought within **six months** of the alleged discrimination.

Before legal proceedings are begun, it may be sensible to raise a complaint with the provider to see whether the issue can be determined to the satisfaction of both parties. Even when legal proceedings have been brought, the provider may wish to attempt to settle the matter through discussion with the complainant. Any discrimination may have been unintentional and the dispute may be capable of being resolved by negotiation.

The Equality Commission provides **free advice** for people who believe they may have been discriminated against. In addition, it provides legal assistance with some cases.

The Equality Commission can arrange for **independent conciliation** for disputes, with a view to promoting the settlement of such disputes otherwise than through the courts. The time limit for bringing an action in court is extended by two months when a person is referred to conciliation services by the Commission.



If a dispute cannot be resolved by conciliation or agreement, and the complainant has brought legal proceedings, the matter will have to be decided by a court. If successful, the complainant could be awarded compensation for any financial loss and or injury to feelings. The disabled person may also seek an injunction to prevent the provider repeating any discriminatory act in the future. The court may make a declaration as to the rights and responsibilities of the parties involved.

### 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](mailto:information@equalityni.org)  
**Website:** [www.equalityni.org](http://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:

- 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
- A short guide for breakdown recovery operators

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