

EQUALITY COMMISSION FOR NORTHERN IRELAND

**Guidance for Service Providers following the case of
Lee -v- Asher's Baking Co Ltd and others [2015]**

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The Equality Commission provides a range of guidance for service providers on how to comply with anti-discrimination legislation. Much of the guidance is focused on particular equality areas, for example ensuring accessibility of services for disabled people¹.

This guide sets out the anti-discrimination laws relating to service provision and the general principles that service providers should be aware of when providing services to the public.² The issues raised in the legal case of *Lee -v- Asher's Baking Co Ltd and others [2015]*³ are outlined and recommendations for good practice included.

The Anti-Discrimination Laws and the Provision of Services

The relevant anti-discrimination laws which relate to the provision of services are:

- [Sex Discrimination \(NI\) Order 1976](#)
- [Fair Employment & Treatment \(NI\) Order 1998](#)
- [Disability Discrimination Act 1995](#)
- [Race Relations \(NI\) Order 1997](#)
- [Equality Act \(Sexual Orientation\) Regulations \(NI\) 2006](#)

These laws aim to prohibit discrimination in relation to the provision of goods, facilities and services to the public, or to sections of the public.

At present discrimination is outlawed in service provision on the grounds of:

- sex
- gender reassignment
- pregnancy and maternity

¹ For example: (i) [Guidance for service providers \(main portal\)](#); (ii) [Every Customer Counts – promoting accessible services](#); (iii) [Assistance dogs – good practice advice for service providers](#); (iv) [Promoting equality in a retail environment \(flags and emblems\)](#); (v) [Providing services to transsexual people](#).

² The anti-discrimination laws allow religious and/or charitable organisations to discriminate in how they provide their services in certain exceptional circumstances. Such organisations may wish to contact the [Equality Commission](#) or, alternatively, the [Charity Commission for Northern Ireland](#) to obtain advice about their particular context.

³ The judgement is, at the time of writing, being appealed to the Northern Ireland Court of Appeal. This guidance will be reviewed after the Court of Appeal issues its judgement and further advice will be provided, if appropriate.

- religious belief
- political opinion
- race, colour, nationality, ethnic or national origins
- sexual orientation

In addition, the *Disability Discrimination Act* prohibits unjustified less favourable treatment of disabled people for reasons related to their disabilities. That law is also especially notable for imposing a special duty on service providers to make *reasonable adjustments* for disabled people in certain circumstances. The purpose of this duty is to remove or reduce physical, procedural and attitudinal barriers that prevent disabled people from enjoying the same equality of opportunity that non-disabled people enjoy.

Proposals to extend Age Discrimination Legislation (Age Goods, Facilities and Services) were subject to consultation in 2015. Further information on these proposals can be found at the [website of OFMDFM](#).

Many different types of goods, facilities and services come within the scope of the laws; examples include, but are not limited to:

- access to any place which members of the public are permitted to enter;
- use of any place which members of the public are permitted to use;
- accommodation in a hotel, boarding house, or similar establishment;
- facilities by way of banking or insurance or for grants, loans, credit or finance;
- facilities for entertainment, recreation, or refreshment;
- facilities for transport or travel;
- services provided by any profession or trader;
- services and facilities provided by public authorities, including healthcare, education and housing providers and local councils.

IMPLICATIONS OF THE LAW FOR BUSINESSES

The judgement in the case of *Lee -v- Asher's Baking Co Ltd and others [2015]* applied existing laws and established legal principles to a particular set of facts.

Key Principles for Service Providers

- Businesses operating in the commercial or public sphere that provide services to the public cannot unlawfully discriminate against their customers or clients on any of the grounds protected by equality laws. This applies to a service provider who is open to and who enters into transactions with the public. As in all cases of alleged discrimination, whether a service provider's actions are

unlawfully discriminatory or not will depend ultimately on the context and actual facts. This guidance should therefore be read in conjunction with [the full judgement](#) of the *Asher's case*.

- Business owners in their role as *employers* cannot normally take factors such as religious belief, political opinion, sex, race, age or sexual orientation into account when making hiring or firing decisions. The same is the case for business owners in their role as *service providers*; i.e. they cannot take such factors into account when deciding how and to whom they will provide their goods and services⁴. This general rule applies regardless of whether a business's owner or his/her employees have any particular religious beliefs or political opinions.
- Decisions on what a business will or will not supply are usually made on straightforward commercial grounds. That being said, business owners who hold moral or religious beliefs may often take decisions which self-limit the scope of their business. For example, decisions may lawfully be taken to not sell alcohol, tobacco, lottery cards or open on a Sunday. While people are of course entitled to hold and manifest their own religious beliefs, businesses cannot operate in the commercial or public sphere in a way which is contrary to the rights of others.
- It will assist businesses if they are clear and open about what goods, facilities or services they offer to the public, just as they should have clear policies and procedures in employment matters. Such policies can make it clear if there are services or goods they do not supply, but these should not be defined in such a way as to be discriminatory on any of the protected grounds.
- There will be times and circumstances when for practical reasons a business may have to decide not to supply a good or service that they normally offer. So long as the reasons for refusing such a request are **genuine** and **legitimate**, then it will not fall foul of equality legislation. There is no exhaustive list of situations when this might occur but a few examples include:
 - a printer may lawfully refuse to print a poster containing a particular image because to print it would otherwise be illegal; for example, an infringement of copyright laws; "hate crime" laws or laws against publishing pornography;
 - a service provider may lawfully refuse to provide a service because he or she is too busy with other workloads; or where a customer is seeking

⁴ This does not apply to service provision on grounds of age at present but legislation with regard to this is presently being prepared.

products or design features that the service provider does not normally provide;

- a service provider may lawfully refuse to provide a person with a service because the customer is acting in a rude or aggressive manner towards the service provider or his/her employees.
- When considering whether or not to accept a particular order, the key question a service provider should ask when assessing whether that decision will be lawful is this: ***if I refuse to accept this order, why am I doing so?*** If the actual reason why is on the grounds of, or because of, the service provider's *or someone else's* political opinion, religious belief, sex or gender, race, sexual orientation or disability then the refusal may well be an act of unlawful discrimination, although the outcome of any legal challenges will depend on the particular facts.

RECOMMENDATIONS OF GOOD PRACTICE

Our general recommendations of good practice for service providers will be familiar to employers:

- Declare that you are an equal opportunities service provider who aims to be open and welcoming to all potential customers;
- Show your commitment to that goal – lead your employees by good example;
- Develop a written equal opportunities policy which covers the provision of services. The Commission has produced a “model” equality policy for service providers that you could adapt for your own business;⁵
- Inform your employees, through training or otherwise, about how you expect them to behave towards your customers and each other;
- Deal seriously and promptly with complaints;
- Conduct periodic reviews of how your policy is operating and take action, where appropriate.

HOW MIGHT THE LAW APPLY IN PRACTICE?

There have been many hypothetical scenarios canvassed in public discussions - such as kosher or halal butchers being asked to sell pork; printers being asked to produce material they think may be pornographic or likely to incite hatred on religious, political or racial grounds.

As set out above, service providers are not required to provide goods or services they do not usually supply. Where they do provide a service, it is unlawful to

⁵ [Equality policy for service providers](#)

refuse a legitimate request for that service solely on the grounds of religious belief, political opinion, sexual orientation, gender, race or disability. If a refusal is genuinely for some other legitimate reason, it would not be unlawful.

For example, the law in Northern Ireland which applies to discrimination on grounds of political opinion does not protect those political opinions which include approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland. Businesses may lawfully decline an order to print a message or image that expresses such a political opinion.

Another exception to the anti-discrimination laws allows a business that is normally open to the general public to discriminate in the provision of single-sex facilities where there is evidence that some users of the facility would be likely to suffer serious embarrassment, or would reasonably object, if obliged to share it at the same time with members of the opposite sex. This is envisaged primarily for application to health and sporting facilities or other circumstances which involve undressing or physical contact.

It is important to remember that whether a service provider's actions in a particular set of circumstances are unlawfully discriminatory or not depends ultimately on the specific context and actual facts. If in doubt, anyone running a business can contact the Commission and seek advice and guidance – this is part of our role in ensuring the effective application of equality laws in Northern Ireland.

If further guidance is required, please contact:

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January 2016