

PROMOTING FAIR PLAY IN SPORT

**A GUIDE TO SPORT AND THE EQUALITY
LEGISLATION IN NORTHERN IRELAND**





INTRODUCTION

The world of sport is made up of an amazing mix of people, including participants, spectators, coaches, administrators and volunteers. All come from varied backgrounds and often with very different identities.

This diversity represents one very positive aspect of sport but should also alert us of the need to ensure that fair play continues to operate at all levels. Sport Northern Ireland is committed to helping promote fairness in sport and in this role would encourage everyone involved in sport not only to respect difference - but to enjoy it.

Equality legislation helps reinforce our commitment to fairness in sport, and this short guide has been produced to help you both understand the law and operate best practice within it. The guide does not aim to provide a comprehensive and definitive statement of the law but instead highlights key legislation and its impact on the world of sport. While Sport Northern Ireland encourages the promotion of equality of opportunity and good relations through its work, it also acknowledges that, from time to time, relations between individuals and groups may break down. It is in these circumstances that the law becomes of great significance. To deal with problems that may come along, increasingly sports clubs and governing bodies must have an understanding of their responsibilities and obligations under the law.

The equality legislation places obligations on sports bodies in two ways, both as employers and as providers of facilities, goods and services. Hence these two areas are dealt with separately later in the guide. The guide also looks at enforcement of the legislation and the role of the Equality Commission for Northern Ireland, and will help direct you towards the appropriate codes of practice and guidance notes. To begin with however, we will first consider what is meant by unlawful discrimination.

Anti-discrimination legislation across the UK is broadly similar. However, as Northern Ireland continues to maintain a separate legislative structure inevitably there are also some differences. If you are interested in exploring these further then we suggest you go to the following website where you will find guidance for governing bodies of sport across the UK on equality legislation:

www.uksport.gov.uk/pages/equality/

Unlawful Discrimination

To begin, unlawful discrimination can be direct, indirect or by way of victimisation or harassment. The equality legislation affords protection to individuals on grounds of specified protected characteristics, namely sex, marital status, religious belief, political opinion, race, ethnic origin, disability, sexual orientation and age.

Direct Discrimination

Under existing legislation, direct discrimination occurs where there is less favourable treatment on grounds of sex, marital status, religious belief, political opinion, race, ethnic origin, sexual orientation, age or disability. Furthermore, under Section 75 of the Northern Ireland Act 1998, all designated public authorities in Northern Ireland are obliged to consider how best to promote equality of opportunity in relation to all of the above, along with dependency.

Section 75 also requires these public bodies to promote good relations on grounds of religious belief, political opinion and race/ethnic origin. To help promote this aspiration Sport Northern Ireland includes equality of opportunity and good relations terms and conditions within all offers of awards to clubs and governing bodies (see later).

For the purpose of establishing liability under the anti-discrimination legislation it is important to recognise that there is no need to show any intention to discriminate, instead it is the effect that is the primary concern. In other words, your motives may be well intentioned but if the outcome is unfair then this still 'counts' in the eyes of the law.

Case Study 1:

Irish Travellers refused permission to play at golf club

Five members of the Irish Traveller Community each received £1000 in compensation in an out-of-court settlement against Dungannon Golf Club in August 2003. The case involved an incident when the five men were refused access to the club house and permission to play the course. It is understood that the men had previously played the course along with non-travellers but when they later returned unaccompanied they were refused permission and asked to leave. The case was brought to the County Court under the Race Relations (NI) Order and was assisted by the Equality Commission. In reaching a settlement the golf club apologised to the plaintiffs and admitted liability for the complaints, accepting that its practices and procedures were unlawful. The golf club agreed not to discriminate against the men in the future and to fully consider any future applications by them for either temporary or full membership.



Indirect Discrimination

Indirect discrimination is more complex than direct discrimination. It occurs when a provision, criterion or practice is applied equally but which puts persons of a particular identity (e.g. on grounds of his or her sex, marital status, religious belief, political opinion, race, ethnic origin, disability, age and sexual orientation) at a particular disadvantage, which puts the person him or herself at that disadvantage and which cannot be shown to be a proportionate means of achieving a legitimate aim. In such cases it is necessary for the organisation to demonstrate that the measure can be regarded as justifiable – as a proportionate means of achieving a legitimate aim (for example, is a height requirement for a post a proportionate means when such a requirement will put female candidates at a disadvantage given physiological differences between men and women?). Indirect discrimination is not covered in quite the same way under the Disability Discrimination Act 1995 but is addressed under Section 75.

Victimisation

Victimisation entails the less favourable treatment of a person because she/he had brought proceedings alleging unfair discrimination, had given evidence or information in a discrimination case or had taken action in respect to a complaint under the relevant legislation. For example, if you have brought a case of discrimination against your employer and you subsequently suffer further disadvantage then you have a right to continue to seek a legal remedy.

Harassment

Harassment is normally a form of direct discrimination and is defined as where, on grounds of a protected aspect of identity (e.g. sex, marital status, religious belief, political opinion, race, ethnic origin, age or sexual orientation) a person subjects another person to unwanted conduct which has the purpose or effect of violating that person's dignity or creating an intimidating, hostile, degrading, humiliating or hostile environment.

Harassment can occur in many ways ranging from verbal abuse to inappropriate jokes or emails, intimidation, social exclusion or physical assault. Ordinarily harassment involves a number of incidents but a single event can constitute as harassment if it is sufficiently serious.

Under the Protection of Harassment (NI) Order 1997 harassment that is not related to a person's identity can be dealt with as either a civil or criminal offence. For example, bullying at work, where the bully picks on everyone 'indiscriminately', can be addressed through this legislation although the inappropriate behaviour must occur on at least two occasions for the legislation to apply.

Case Study 2:

Owen -v- Professional Golf Association

Judy Owen was employed as a trainee manager by the Professional Golf Association

On her first day at work she had a conversation with her manager, Mr Paton (the PGA's director of training and education) and the PGA's Chief Executive, during which they described the way in which it would be appropriate to behave as a woman within the male-dominated PGA. On her second day, during the course of a conversation about the PGA's policy on women wearing trousers, Mr Paton joked that they would probably like it if she came to work in a short skirt. A few weeks later, she and a female colleague were introduced by Mr Paton as 'the girls', even though she was responsible for the smooth running of the course. Also in Mrs Owen's company, some female professional golfers were referred to as 'dykes and lesbians'. This was to her discomfort but to the merriment of several present, including Mr Paton. She claimed sex discrimination. Upholding her claim, the tribunal held that the incidents of 'offensive or demeaning opinions about, or language used in respect of women', were gender specific and amounted 'per se to detrimental treatment to her on the grounds of her sex'.

(Case no.1303043/98)

In the Equality Commission for Northern Ireland's guide to bullying and harassment in the workplace [http://www.equalityni.org/archive/pdf/HarBullying0306\(F\).pdf](http://www.equalityni.org/archive/pdf/HarBullying0306(F).pdf) the following list of examples of harassment is included:

- physical behaviour ranging from touching to serious assault
- verbal and written harassment through jokes, racist remarks, offensive language, gossip and slander, sectarian songs, threats and letters
- visual displays of posters, graffiti, obscene gestures, flags, bunting or emblems or other offensive material
- isolation or non co-operation at work, exclusion from social activities, coercion, including pressure for sexual favours, pressure to participate in political/religious groups
- intrusion by pestering, spying, following etc.

Relevant Statutes

In Great Britain there is now a single equality act that covers all grounds of difference. Here in Northern Ireland we continue to operate separate pieces of legislation for each protected characteristic.

In summary, these are:

- Sex Discrimination (NI) Order 1976 ¹
- Fair Employment and Treatment (NI) Order 1998
- Race Relations (NI) Order 1997
- Disability Discrimination Act 1995
- Equality Act (Sexual Orientation) Regulations (NI) 2006
- Employment Equality (Age) Regulations (NI) 2006
- Northern Ireland Act 1998 (Section 75 and Schedule 9).

¹ See also the Gender Recognition Act 2004, p.21

In general terms each of these statutes affords broadly similar protection from discrimination both in employment and when providing goods, facilities and services. At the present time, the age regulations only apply to employment but are to be extended to goods, facilities and services in the near future.

Recent case law has extended protection to those situations where the discrimination is associated with a protected characteristic whether or not the individual is of that identity. For example, in the case of *Coleman vs Attridge Law* 2008, Mrs Coleman won a disability discrimination case because of her responsibilities towards her son who had a significant disability while she did not.

If you are in any doubt about a particular piece of legislation then please contact either the Equality Commission or Sport Northern Ireland for further advice.

The Belfast/Good Friday Agreement and Sport

The peace process in Northern Ireland ended with the signing of the Belfast/Good Friday Agreement in 1998. While this document does not have the same legal status as the anti-discrimination statutes, nevertheless it helps provide a steer when dealing with difficult and contentious issues relating to national identity.

The unique constitutional position of Northern Ireland, as defined within the Belfast/Good Friday Agreement, presents many significant issues for those involved in the promotion of sport. Many issues require careful management if we are to continue to ensure that equality of opportunity and good relations are enhanced and that a positive outcome is achieved and maintained for the benefit of both sport and the wider community.

Sport Northern Ireland has produced a position paper in relation to these issues and this is summarised below.

Constitutional Status of Clubs/Governing Bodies

Although the terms 'clubs and governing bodies' capture a wide range of organisations, there are overarching considerations that must be addressed by them all with regard to how those of different identity are able to enjoy membership and access any goods, facilities and services that are made available – and are supported by Sport Northern Ireland.

All offers of capital support from Sport Northern Ireland now contain the following Clauses with standard Terms and Conditions of Awards:

'The Applicant must operate an equal opportunities policy during and following completion of the Project and no-one shall be denied the right to equal access to any goods, facilities, services and/or employment opportunities attaching to the Project on grounds of race, gender, sexual orientation, disability, religious belief, political opinion, marital status, age, or having or not having dependants; in addition, the recipient shall take all reasonable steps to ensure that the facilities and premises assisted by this grant shall be run in an inclusive manner which will both aspire to and promote good relations'.

In this context, the term 'Project' is interpreted widely to include all works, activities, policies, strategies and associated procedures attaching to an application for support. These Terms and Conditions ensure that the organisation will continue to meet various obligations under anti-discrimination legislation and including Section 75 of the Northern Ireland Act 1998 when engaging with projects that have Sport Northern Ireland's support.

Over and above these considerations, and in accordance with best practice guidance as provided by the Equality Commission for Northern Ireland, there is an expectation that in relation to any project supported by Sport Northern Ireland, the organisation will endeavour to promote a good and harmonious environment and an atmosphere in which no person

feels under threat or intimidated because of his or her identity.

This obligation extends to those who are officers and members and those who use facilities and services, as well as the display or articulation of symbols etc. that have the potential to disrupt a good and harmonious environment.

Offers of revenue awards contain broadly similar clauses:

'The Applicant must operate an equal opportunities policy during and following completion of the Project and no-one shall be denied the right to equal access to any goods, facilities, services and/or employment opportunities attaching to the Project on grounds of race, gender, sexual orientation, disability, religious belief, political opinion, marital status, age, or having or not having dependants; in addition, the recipient shall take all reasonable steps to ensure that the opportunities and programmes assisted by this grant shall be run in an inclusive manner which will both aspire to and promote good relations'.

Flags, emblems and anthems

Sporting organisations in receipt of Sport Northern Ireland funding and/or recognition must acknowledge that certain flags, emblems, anthems, symbols and regalia have the potential to disrupt a good and harmonious environment. In Sport Northern Ireland's view any event hosted by a sporting organisation that is associated with Sport Northern Ireland must be mindful of the need to present a good and harmonious environment for those taking part and spectating.

Under the Belfast/Good Friday Agreement, an athlete or team has the right to represent either a Republic of Ireland or UK team and it is then wholly appropriate for that athlete/team to compete under the flag of that country, i.e. the Irish tricolour or the Union flag. However, difficulties arise when an individual or team represents either an All Ireland body or a Northern Ireland organisation. For the former, i.e. All Ireland, then Sport Northern Ireland's preferred option is a flag that is non-contentious, such as the 'patchwork' containing the flags of the four provinces. For the

latter, ultimately it will be for the governing body to decide which flag is appropriate. Many existing flags have no official status and this includes the former Northern Ireland 'flag' (or flag of the Executive Committee of the Privy Council of Northern Ireland or Ulster Banner) that only had official status during the life of the NI Government between 1953 and 1972, and would be regarded by many as contentious in the current political circumstance. The Northern Ireland Executive has yet to agree a symbol or flag to represent Northern Ireland but itself uses the flax plant on Assembly stationery.

The Belfast/Good Friday Agreement does not make reference to the playing of anthems. Sport Northern Ireland is aware that historically, different governing bodies have adopted various positions on the matter. For example, the IFA play the 'God Save the Queen' anthem, the GAA typically play 'Amhrán na bhFiann', while other sports have chosen to play their own distinctive songs. It is difficult for Sport Northern Ireland to be prescriptive about the playing of particular anthems at sporting events in the absence of guidance from the Northern Ireland Executive but it would be expected that each sport would adopt an anthem, and associated ceremonies, that are reflective of, and sensitive to, both the traditions of the sport itself and also respectful of the identity of those from different communities that may be chosen to either play or spectate.

NI citizenship, the Belfast/Good Friday Agreement and freedom of choice

Further to the Belfast/Good Friday Agreement, any Northern Ireland citizen has the birth right to identify him or herself as British, Irish or both. In practical terms this means that a club or governing body must accommodate freedom of choice regarding an individual's national identity and should not place any obstacle in the way of those whose preference may be at odds with the general alignment of the organisation. In other words there is an expectation that the organisation will operate in the best interests of the sport that it represents and the promotion of sporting success irrespective of personal allegiances

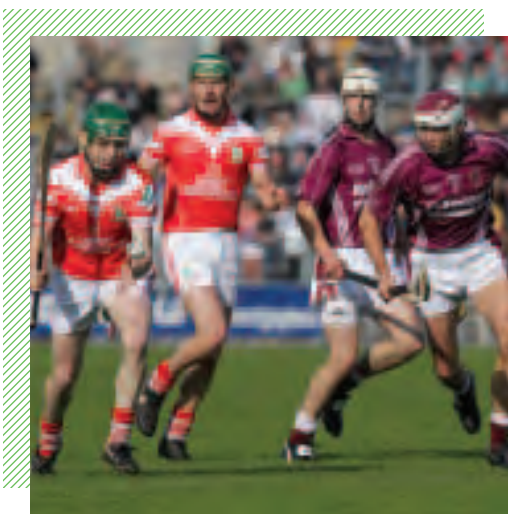
of individual members. Where an organisation chooses to align on both a 'North-South' and 'East-West' basis, there is an expectation that the constitution will be inclusive of both dimensions and will reflect this dual arrangement.

Issues may arise with athletes who choose to maintain both identities, British and Irish, or those who decide to change identity. Where an athlete chooses to maintain both identities then it would not be reasonable for that person to be declared eligible to compete for both nations simultaneously and in these circumstances, reasonably it would be expected that the athlete must declare for either the UK or Ireland but not both.

Where an athlete makes a decision to change national allegiance then it would be appropriate for the athlete to have made that declaration for a defined period prior to being eligible to represent that nation and, for example, to have played with a club affiliated to that national body for a specified period of time e.g. two years.

Neither residency criteria nor the possession of either a British or Irish passport should be used as a test of national allegiance or identity, in particular as many citizens of Northern Ireland actually possess both passports. In very exceptional circumstances an association may be aligned to an Irish or British body such as the Commonwealth Games Council and when this occurs then specific instruction on eligibility criteria must be obtained, for example, possession of a passport. It would be inappropriate to use this as a selection criterion but the relevant body may require this as a condition of eligibility to compete.

For an athlete to become eligible for support by Sport Northern Ireland then he or she must either have been born in Northern Ireland and/or have resided and have had a full time address in Northern Ireland for a period of at least 24 months prior to the application. Sport Northern Ireland is aware that governing bodies may differ with regard to eligibility criteria (e.g. place of birth or grand parenting). Please note that the funding criteria described above apply only to applications for support from Sport Northern Ireland and not to an athlete's eligibility to compete for Northern Ireland.



This decision will continue to rest with the relevant governing body.

Representation by governing bodies

Sport Northern Ireland will continue to operate its policy of recognising only one governing body for each sport. Sport Northern Ireland is aware that these recognised governing bodies operate within very different geographical-national boundaries, for example, Northern Ireland, Ulster, United Kingdom, Great Britain (NI) and All Ireland. Sport Northern Ireland acknowledges the right of each governing body to continue to decide which boundary is most appropriate for its sport but for the purposes of support and investment by Sport Northern Ireland, this must include, as a minimum, the six counties that make up Northern Ireland. In allocating support and investment, Sport Northern Ireland will take into account the relative proportion of the organisation that falls within Northern Ireland and will then distribute resources accordingly. For information, the following table illustrates geographical/national terminology as applied to the British Isles:

Geographical Areas	Definition
Great Britain	Part of the UK comprising the island of Britain (England, Scotland, Wales) (i.e. not Northern Ireland or other islands such as the Isle of man or Channel islands)
United Kingdom	An island country spanning GB (England, Scotland and Wales), Northern Ireland and other smaller islands
All Ireland	The whole of the island of Ireland, irrespective of national borders
Republic of Ireland	The 26 counties on the island of Ireland, making up the international constitutional body known as the Republic of Ireland
Northern Ireland	The fourth country of the UK, comprising six of the nine counties of Ulster – Antrim, Tyrone, Derry, Armagh, Down, Fermanagh
Ulster	One of four provinces on the island of Ireland, including the six NI counties and three counties in the Republic of Ireland (Donegal, Cavan, Monaghan)

Enforcement of the Legislation

The employment provisions of the anti-discrimination legislation are enforced generally by way of complaint to an Industrial Tribunal, while the Fair Employment Tribunal deals specifically with employment issues relating to religious belief and/or political opinion, or hybrid cases involving either of these. Complaints of discrimination in the provision of goods, facilities and services are typically a matter for the County Court.



Case Study 3:

Sterling -v- Leeds Rugby Club and Others

An employment tribunal ruled that a leading black rugby league player was unlawfully discriminated against on the grounds of race. At the beginning of the 2000 season Mr Sterling, a professional rugby league player with Leeds Rhinos was told by the first-team coach, an Australian, that he was excluding him from the first-team squad. Mr Sterling, who is of Afro-Caribbean origin, challenged that decision and the coach made it clear that he would not be selected for the first team, irrespective of his performance in training and in A-team matches. Mr Sterling claimed that his exclusion from the first-team squad was discrimination on the grounds of race. The tribunal agreed, finding that the coach treated the applicant less favourably than he would have treated another player whose performance and potential he did not rate. The club had released a number of white players, but none were treated by the coach in the way he treated the applicant. No satisfactory explanation was given for the decision to deny the applicant the opportunity to improve, and thereby compete for a place in the team. Mr Sterling was granted £10,000 for injury to feelings, £5,250 for loss of opportunity to win match bonuses and £750.58 interest.

Commenting on the findings, the regional director of the Commission for Racial Equality said, 'this case is a reminder to all sports bodies of the need to understand the nature of covert as well as overt racism. Clubs must take complaints of discrimination seriously and make proper investigations. Although Leeds has an equal opportunities statement, it is clear that proper procedures were not in place.'





The Role of the Equality Commission

Much of the interpretation of the law rests with the Equality Commission. The Commission was established to oversee the implementation of Section 75 of the Northern Ireland Act 1998, as well as to bring together the work of the former Fair Employment Commission, the Equal Opportunities Commission for Northern Ireland, the Commission for Racial Equality for Northern Ireland and the Northern Ireland Council on Disability. Its brief is to work towards the elimination of discrimination on grounds of gender, marital status, religious belief, political opinion, race, disability, age, sexual orientation and having or not having dependants, and to promote good relations on grounds of religious belief, political opinion and race/ethnic origin.

The Commission has discretion to provide support for cases brought forward under the legislation but in the absence of this support it is worth remembering that there is no legal aid available for employment related cases. The Commission also has the power to undertake functions such as investigations and research in addition to providing advice and assistance to individual complainants and issuing codes of practice. The relevant codes of practice and guidance notes are available from the Equality Commission at www.equalityni.org

Interpretation of the Legislation in a Sporting Context

The equality legislation is the subject of interpretation by courts and tribunals, in particular in relation to the world of sport. In the following sections we use case law to illustrate broad principles in this context, where possible, in relation to both employment and the provision of facilities, goods and services.

Obligations upon employers

Under the equality legislation, employers in the world of sport clearly have a duty of care:

- a) to ensure that their employees are not subject to discrimination;
- b) to maintain a good and harmonious work environment in which no person feels threatened or intimidated.

The following are some examples of actions brought by employees who have been subjected to unlawful discrimination.

Case Study 4:

Harrold -v- England and Wales Cricket Board

In this case a female employee became pregnant by another employee and was pressured by a senior manager to undergo an abortion, which she did. She was subsequently dismissed and was held by a tribunal to have been discriminated against on grounds of her sex. (IT, 1997)

Case Study 5:

Couch -v- British Boxing Board of Control Ltd

Ms Couch brought a successful claim of sex discrimination on the ground of the Board's refusal to grant her a licence to box professionally in the UK. The Boxing Board of Control had refused to grant Ms Couch a licence on the grounds that:

- Pre-menstrual tension would make a female more liable to injury.
- Women are more likely to suffer life-threatening blows to head and breasts.
- Women suffering from pre-menstrual tension would be more aggressive and consequently the sport would be less safe.

In this case, the 'medical grounds' were all 'gender-based stereotypes and assumptions', said the tribunal. There was no evidence 'that boxing posed a higher risk to women than to men or vice versa and there was no credible medical evidence to establish that any of the 'medical grounds' relied on applied to the applicant as an individual or constituted a significant health risk to women in general as professional boxers.' In the tribunal's view, the Board refused the application because it 'did not want to have any responsibility at all for licensing female boxers'.

It should be noted that there are limited exceptions/ exclusions to the prohibition on discrimination as it relates to sport. For example, Article 45 of the Sex Discrimination Order contains an express exclusion in relation to participation in competitive sport where the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man. Discussion of all these exclusions is however beyond the scope of this guide.

Case Study 6:

Hardwick -v- English FA

In another case in 1997, Vanessa Hardwick successfully claimed that the Football Association sexually discriminated against her on a two week coaching course. Her case was backed by her teaching union and the Equal Opportunities Commission. She complained that the course has been dominated by men, that she had been deliberately left out of certain role-plays and that despite better marks than a number of men who had passed an earlier course, she was failed. The tribunal decided that the FA had deliberately failed her on the grounds that she was a woman and she was awarded £5000 for injury to feelings. The tribunal requested that she be awarded the coaching qualification, or receive further damages. Three years later the tribunal ruled that Hardwick should receive £16,000 compensation for loss of earnings and recommended that she should be awarded her Advanced Coaching Licence within 28 days.

Case Study 7:

Morrell -v- Owen and Others

In 1993, Mr Justice Mitchell adjudged that there is a greater duty of care owed by organisers and coaches of a disabled person's sporting event to the disabled participants than that owed by organisers and coaches where the participants are not disabled.

The incident which brought about this judgement occurred during a training session held in November 1989, organised by the British Les Autres Sports Association (BLASA) and held in a sports hall in Birmingham. Two activities, archery and discus, were being held in the same sports hall, which was divided by a fish net curtain. Miss Morrell was a disabled archer who was injured by a discus which struck the net and so hit her on the side of the head. It was claimed by the coaches present that they had warned Miss Morrell of the dangers of the event on the other side of the net. Miss Morrell claimed that she had not been warned. Mr Justice Mitchell believed Miss Morrell, stating that the kind of mis-throw which occurred was entirely foreseeable, as was the accident in question. He therefore stated that the coaches owed a greater duty of care to the disabled participants than they would to non-disabled participants.

More generally, when coaching disabled people it is obviously important to balance the need for extra duty of care with the wishes and aspirations of the people being coached. Some disabled people may need more support in some situations than others. For example, a person who is learning disabled may not appreciate the dangers of walking across a javelin throwing area. A balance between appropriate support and maintaining the independence of an individual is important.

Furthermore, legislation can be brought against membership clubs who discriminate against people of a different ethnic group, religion or gender, as shown in the example below:

Case Study 8:

Wood -v- Thornton Lodge Bowling Club (Huddersfield)

Mr Wood, a British-born black person, visited Thornton Lodge Bowling Club in January 1982 with three friends. The bowling club was affiliated to the Club & Institute Union (CIU) and admission was open to club members and their guests and to members of other clubs affiliated to the CIU. It was Mr Wood's first visit to the bowling club, and he and his friends had intended to obtain admissions by virtue of being members of another CIU affiliated club.

At the entrance, the doorman, Mr Earnshaw, told Mr Wood's friends 'you're all right, but I don't know about your mate. We don't have them in'. Indicating that he was referring to 'foreigners' and 'darkies' and that this included Mr Wood. As a result, neither Mr Wood nor his friends entered the club.

At the hearing in Leeds County Court, in July 1983, the club's defence was that Mr Wood and his friends did not have the appropriate CIU membership documents. The club did, however, concede that it had no ethnic minority members, even though 50% of the population in the area around the club were not white. In his evidence, the doorman said 'we are surrounded by them around here, and if we let one in, they will all want to come in.'

The Court did not accept the club's defence and found that it was operating a 'colour bar.' Mr Wood was awarded damages of £50 and an injunction was issued restraining the club from further discrimination. The court was also ordered to pay the legal costs of the case.

Case Study 9:

St Peter's GAA -v- Craigavon Borough Council

In the early 1980's, St Peter's GAA club brought an action against Craigavon Borough Council under the Ombudsman's Act on the grounds that Craigavon Borough Council had unlawfully discriminated against St Peter's GAA in that they had refused to grant St Peter's a lease for a football pitch. Furthermore, the Council insisted that any lease was subject to two further conditions:

- No matches to be played on a Sunday.
- A 12ft high pitch wall to be erected to obscure the view from Lurgan Castle.

St Peter's GAA action was successful and they were awarded £125,000 and Craigavon Borough Council was made to pay this figure and costs.

Craigavon Borough Council appealed the decision but lost the appeal incurring further legal costs. Eventually, a number of elected members were surcharged and removed from office for five years.

Obligations upon providers of goods, facilities and services

Public authorities are subject to the equality legislation in terms of how they deliver goods, facilities and services. However, the issue of private clubs and voluntary bodies is more complex and may differ under each of the pieces of the primary legislation. Below are examples where organisations have violated equality legislation with the inappropriate supply of goods, facilities and services.

Case Study 10:

Ward -v- JJB Sports

The Ward family, members of the Traveller Community, sued JJB for unlawful racial discrimination under Article 21 (1a) of the Race Relations (NI) Order 1997 in that the company 'had refused or deliberately omitted to provide them with services'. John Ward, another son of Mr and Mrs Ward had received a letter from the company, which alleged that John had caused trouble in the shop. The letter stated:

'Would you please note that with effect from the receipt of this letter you are no longer welcome at any of the branches of JJB Sports PLC and you are requested to comply with this request. Will you please note that this applies to all members of your family.'

The case fell to be decided solely on the reason behind the inclusion of the final sentence in the letter. The Judge found that the letter would not have been sent had the Wards not been members of a minority ethnic group. He gave the declaration that JJB had committed unlawful discrimination and granted an injunction in the terms sought. The Wards were each awarded £250 damages.

The following are cases where Part III of the Disability Discrimination Act (1995) has been violated with respect to the provision of goods, facilities and services. All plaintiffs were clients of the Disability Rights Commission (DRC).

Case Study 11:

Failure of golf club to permit use of motorised golf cart

The client, who had multiple sclerosis, formulated a claim to the county court after his local golf club refused to permit him to use a motorised golf cart, apparently on the basis that to do so would lead to irreparable damage to the turf. In particular, it was suggested by the golf club that the turf had only recently been laid and that until it had a chance to settle there was no prospect of the client being allowed the use of the motorised cart. The DRC obtained an expert's report on the potential damage to a golf course from being exposed to the sort of golf cart used by the client, and without which, he cannot comfortably play.

The County Court hearing decided that the golf club should make a reasonable adjustment to allow the Client to use his golf buggy on the course in dry weather conditions. The club also had to change its 'no buggy' policy to allow other disabled people to enjoy the same level of provision.

Case Study 12:

Conditions imposed on a wheelchair user's attendance at an international rugby union ground

The client, who was a wheelchair user, alleged unfavourable treatment by a rugby ground in its provisions for disabled fans. The Rugby Union's rules state that a non-disabled person must accompany a disabled person. This rule means that the client must purchase two tickets for each game he wishes to attend, although the one for his companion is at a reduced rate. In addition, although the client joined the Rugby Union's disabled fans register he was not offered seating on the terrace since the Union's rule gave priority to those who had a disability as a result of playing rugby.

The defendants agreed to change almost all of their ticketing practices and to re-design their various forms. They developed new policies in agreement with the DRC as part of a final settlement. They also agreed to provide disability equality training for all staff.

The following cases relate to the Sex Discrimination (NI) Order 1976 and the Fair Employment and Treatment (NI) Order 1998.

Case Study 13:

Welcome for agreement on mixed teams

The Equality Commission welcomed the outcome of a case in which nine girls challenged the decision of Down County Board of the GAA not to allow teams of mixed gender to compete in their Under-14 competitions.

Petra Shiels, Director of the Legal Services Department of the Sex Equality Directorate of the Equality Commission for NI said that she was pleased that the girls who took the case would now be able to participate in the sport of their choice. 'These girls enjoy playing Gaelic football and hurling and were disappointed at being denied the right to play on their local team... after the launch of proceedings the Down County Board removed the ban they had imposed on mixed gender teams, but only permitted girls to participate up to age 12.' Following the agreement reached, Down County Board of the GAA now allows girls to participate in mixed gender Gaelic football & hurling teams in the under-14 age group, which is the level the girls concerned have moved on to.

Case Study 14:

Cases withdrawn after teams admitted to League

A court case taken against the Irish Football League and listed for June 2002, was finally withdrawn after the plaintiffs, two football teams, were admitted to the League in May 2002. The Equality Commission for NI, who had assisted the two teams, Donegal Celtic and Lurgan Celtic, welcomed the outcome of the case.

The court cases, which alleged that the Irish Football League committed unlawful discrimination by refusing to admit the teams into the Irish League Second Division, were due to be heard at Belfast County Court on 15 May 2002. Following an agreement between the parties the cases were adjourned until 24 June. Both clubs have since been admitted to the Irish Football League.



Other Issues

Volunteers

Many of the employment provisions contained within the anti-discrimination legislation may also apply to volunteers where the extent of their volunteering may be regarded as sufficient to constitute a form of employment. For example, this could include a situation where an individual can show a longstanding relationship involving regular payment which is more than simply expenses and sundry costs attached to coaching. Also remember, even where the volunteer is not regarded as an employee, he or she is still providing goods, facilities and services on behalf of the organisation.

Training

Under the Sex Discrimination (NI) Order 1976, the Fair Employment and Treatment (NI) Order 1998 and the Race Relations (NI) Order 1997 it is permissible to provide training for one sex, religion or race/ethnic origin where it has been clearly demonstrated that there is under-representation at particular grades or there is a need to redress an existing imbalance. However, under normal circumstances training should be made available to all.

Private members clubs

At the present time, private clubs may have certain exemptions from the legislation especially in relation to sexual orientation, disability and race where the purpose of the club is to promote activities associated with that protected characteristic. Furthermore, under the sex discrimination legislation there are particular exemptions for clubs with fewer than 25 members. More generally, the private club provisions under the equalities legislation apply to any association of persons with 25 or more members where admission to membership is regulated by a constitution and it is not a trade organisation. Simply calling a service a club does not necessarily mean it will be a private club.

Gender Recognition Act (2004)

The purpose of the Act is to provide transsexual people with legal recognition in their acquired gender, subject to some specified exceptions. The Act allows for recognition following the issuing of a Gender Recognition Certificate by a Gender Recognition Panel. Before issuing such a certificate, the Panel must be satisfied that the applicant:

- has, or has had, gender dysphoria
- has lived in the acquired gender throughout the preceding two years
- intends to continue to live in the acquired gender until death.

Gender dysphoria refers to significant psychological distress associated with the perception of having to live the life of someone of the other gender. In practical terms it is intended that, on the issue of a Gender Recognition Certificate, the person will be entitled to a new birth certificate reflecting the acquired gender and will be able to marry someone of the opposite gender to his or her acquired gender.

An amendment to the Act has made it unlawful to gain an advantage through gender reassignment in a sport where gender plays a significant role, for example, where the sport involves physical strength, stamina or physique.

Single identity provisions

Gender

Under the sex discrimination legislation, restricting participation in any competitive event to members of one gender is not unlawful where the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man. Also, a single gender provision can be justified if users are likely to suffer serious embarrassment in the presence of a person of the opposite gender (e.g. women only gym or swimming classes) or where a woman might reasonably object to physical contact with a man or vice versa (e.g. self defence classes).

Religious Belief

A governing body or club that wishes to place restrictions on dress and appearance need to ensure that these do not indirectly discriminate against certain religions (e.g. muslim veils, dreadlocks, kippot) and must be able to objectively justify the restriction, for example, on health and safety grounds.

Marital Status/Sexual Orientation

The organisation must ensure that any discounts etc available to married couples must also be offered to civil partners.

Positive/Affirmative action measures

Under relevant statutes it is permissible to take certain positive steps to redress existing imbalances. For example, it may be acceptable to welcome applications from under-represented sections of the community where monitoring has shown an historical shortfall but at the point of selection then the principle of merit must be applied. Equally, training may be made available to one gender, religion or race but only where research clearly shows an existing imbalance.

Northern Ireland Act 1998 (Section 75 and Schedule 9)

Section 75 requires all designated public authorities in Northern Ireland (and including Sport Northern Ireland and District Councils), when carrying out their functions, to:

1. Have due regard to the need to promote equality of opportunity:
 - a) Between persons of different religious belief, political opinion, racial group, age, marital status, or sexual orientation.
 - b) Between men & women generally.
 - c) Between persons with a disability and persons without.
 - d) Persons with dependants and persons without.

And:

2. Have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

In its equality scheme, the public body must specify how it intends to fulfill the requirements imposed by Section 75. It must assess the equality impact of its policies and show that it has considered what measures might lessen any adverse impact that the policy may have on the promotion of equality of opportunity and good relations. For example, each funding policy enacted by Sport Northern Ireland must be reviewed to consider any potential adverse impact relating to the nine Section 75 grounds.

Further Information

Further information on these and other aspects of the equality legislation can be obtained at:

www.equalityni.org







The leading public body for the
development of sport in Northern Ireland

Sport Northern Ireland

House of Sport
2a Upper Malone Road
Belfast BT9 5LA

Telephone: (028) 9038 1222
Facsimile: (028) 9068 2757
Minicom: (028) 9068 2593
Email: info@sportni.net
Website: www.sportni.net

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