



Equality Briefings
Disability Discrimination

Awareness of Parkinson's Disease in Licensed Premises

Use of common law Right to Refuse Entry and Service

Equality Act 2010 and Disability Discrimination



Fife Centre for Equalities aims to build a collective voice to champion equality, diversity, inclusion and social justice across Fife and beyond.

Creative Commons License

This publication is released on a Creative Commons Attribution - NonCommercial 4.0 International License.

Feel free to share it, adapt or modify it for non-commercial use, please refer to Fife Centre for Equalities as the original source.

If you would like to contribute or have suggestions for future changes/additions, please do not hesitate to contact us - this guidebook is continually updated with new information.



www.centreforequalities.org.uk

New Volunteer House, 16 East Fergus Place, Kirkcaldy, KY1 1XT

Fife Centre for Equalities is a Company Limited by Guarantee registered in Scotland No. 538028 and registered Scottish Charity No. SCO44683.

Issue

This briefing follows on from an incident on Tuesday 27th September from 7-9pm, where a person with Parkinson's Disease (PD) was refused service at The Robert Nairn (JD Wetherspoon) Kirkcaldy on the premise of being under the influence.

This case is particular in that the person refused service has suffered from PD for over 20 years; had been a regular customer of the establishment and that the bar staff involved were established not new in post (i.e. staff would have had time to complete a basic training in Standards of Service training and additionally have the opportunity of learning of the customer's condition).

1. Background

1.1. Parkinson's disease: symptoms, occurrence, misconceptions

Parkinson's disease affect a person's movements and its main symptoms are tremor (shaking), slow movement and stiffness. It is a condition in which parts of the brain become progressively damaged over many years and any combination of these symptoms may show, with their extent and progression over time varying from person to person.

Around 1 in 500 people are affected by Parkinson's disease, with an estimated 127,000 people in the UK (i.e. approximately 750 people in Fife). Symptoms typically develop over the age of 50 and men are slightly more likely to get Parkinson's disease than women . Due to its symptoms, up to 1 in 4 cases are mistaken for drunkenness . The same study also found that 1 in 3 are stared at and 1 in 10 sufferers are laughed at in public.

1.2. Licensing (Scotland) Act 2005 and the right to refuse service

The Licensing (Scotland) Act 2005 requires that all staff are trained before they sell or serve alcohol. For license holders and their staff, it is an offence to allow breaches of the peace, drunkenness or disorderly conduct; selling alcohol to a drunken person; it is also an offence for a drunken person to enter or remain on licensed premises .

The right to refuse service (and by extension, refusal of entry) intervenes in those cases, this is however based in common law rulings and not detailed in either of the Licensing Act (2003) and Licensing (Scotland) 2005).

1.3. Equality Act 2010 and Discrimination

The Equality Act 2010 ('the Act') is clear in that everyone accessing facilities, goods or services should be able to do so fairly – regardless of their age, gender, maternity or pregnancy, race, sexual orientation, disability, gender reassignment, religion or belief (the 'protected characteristics'). The Act applies to any organisations of any size or sector (i.e. not just Public Sector) that deal with the public (with some exceptions in some forms of member associations).

Under the Act, it is also an offence to discriminate against someone who is perceived to have a protected characteristic or who is associated with someone who has a protected characteristic. Also, premises must make reasonable adjustments to accommodate disabled people, and employers are responsible for the actions of their staff.

Licensed businesses, such as Hotels, Restaurants, Cafés and Pubs, in deciding who to serve and who not to serve based on a protected characteristic risk directly discriminating against their own customers and can be sued for damages (see a selection of related cases in Appendix 1).

1.4. Legal Position: Disability Discrimination

Direct discrimination because of disability

Direct discrimination applies to disability in the same way it applies to all the other protected characteristics, i.e. where a person is treated less favourably than someone else because they have a disability.

Indirect disability discrimination

The Equality Act 2010 makes indirect disability discrimination by businesses unlawful. This could be when a business applies a policy, criterion or practice in the same way to all individuals, but that policy has an effect that particularly disadvantages disabled people.

Discrimination arising from disability

Discrimination arising from disability occurs where a disabled person is treated unfavourably, not because they have a disability (which would be direct discrimination), but because of something connected with their disability.

EXAMPLE: DISCRIMINATION ARISING FROM DISABILITY WITH TOURETTE'S

Jane has Tourette syndrome and often shouts loudly. She is not allowed into a café because the owner objects to her shouting. Jane is excluded not because she has the syndrome, but because of her shouting, which is a manifestation of (something 'arising from') her disability. Unless the café owner can justify this treatment towards Jane, she will have experienced discrimination arising from her disability.

Reasonable adjustments

Businesses are under an obligation to make reasonable adjustments where, if the adjustment were not made, a disabled person would be at a substantial disadvantage compared to people who are not disabled.

Harassment

Harassment is unwanted conduct related to a protected characteristic or unwanted conduct that is sexual in nature. Businesses which provide goods, facilities or services must not allow their customers to be subjected to harassment which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Victimisation

It is unlawful victimisation for a service provider to treat someone badly because they have made a complaint about discrimination or harassment under the Act, or helped someone else to make a complaint, or because the service provider thinks that they are doing or may do these things. This applies whether or not the person being victimised is disabled.

2. Considerations

Fife Centre for Equalities (FCE) considers that good standards of service within the Licensed Trade involves making sure Licensees and serving staff are trained so that any customer, regardless of disability or protected characteristics, can feel welcome within the establishment.

The British Beer & Pub Association short video on 'An open welcome - why being accessible is good for your pub' makes the business case for this clearly. Similarly, the legal case for businesses to be fully aware of the Equality Act 2010 can be detailed in the range of cases (see Appendix) in which compensation and damages were awarded.

As such, including disability awareness that points out commonly misconceived conditions such as Parkinson's Disease, and the obligation to make reasonable adjustments to be prioritised learning points in the basic training Licensees provide to their serving staff.

2.1. Suggested Resources/Awareness Raising to share

- BBPA 'An open welcome - why being accessible is good for your pub' (video) – *JD Weatherspoon is a member of BBPA since 2012
<https://www.youtube.com/watch?v=bMUxRAxtPJE&feature=youtu.be>
- Parkinson's UK Information page on symptoms:
<https://www.parkinsons.org.uk/content/parkinsons-symptoms>
- Business Media/Press article on Invisible Disabilities
<http://www.ibtimes.co.uk/invisible-disabilities-not-every-disability-requires-wheelchair-1531496>

2.2. Suggested follow ups/actions points

- Basic information and/or media campaign informing on
 - Equality Act 2010 and Disability Discrimination
 - Parkinson's Disease misconceptions, and related conditions - Tourette's, Ataxia, Muscular Dystrothia
 - Invisible Disabilities / Wider Disability Discrimination
- Liaise with The Robert Nairn Kirkcaldy and tie-in JD Wetherspoon-supported National Award Scheme Best Bar None current campaign 'A Good Night Out' / extend message to promote positive messages of Disability Awareness in License Trade
- Consider participation/promotion of Parkinson's Awareness Week 2017 (usually mid April)
- Develop work with Parkinson's UK re: awareness badge / recognition toolkit
- Contribute to development & feedback of SCLPS / SALPS Certificate
 - Section on Standards of Service and Refusal of Service to include a 'Disability Awareness' learning outcome

APPENDIX: Additional Resources

Related Cases

- Irish Traveller refused service in public house, Oxford, England, 2007 - £4500 compensation, £7500 total claim - Race Relations (Amendment) Act, 2000
- Gay couple refused B&B accommodation, Penzance, England, 2011 – £3600 damages – Equality Act 2010
- Gay couple refused B&B accommodation, Berwickshire, England, 2012 – £3600 damages – Equality Act 2010
- Irish Travellers refused entry into a public house, London, England, 2015 [Howe v JD Wetherspoon] - £3000 to each of 8 claimants – Equality Act 2010

Equality Act 2010 and Businesses

Equality act 2010: What do I need to know? Quick-start Guide for Businesses Who Sell Goods and Services

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85008/business-quickstart.pdf (Disability: pg 13-16)

Equality law - Hotels, restaurants, cafés and pubs

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-law-hotels-restaurants-caf%C3%A9s-and-pubs>

Disability discrimination

<https://www.citizensadvice.org.uk/discrimination/discrimination-because-of-disability/disability-discrimination/>

Press/Media Articles

A Day in the Life of a Parkinson's Disease Sufferer

http://www.pdf.org/en/media_news/release/pr_1398711999

Parkinson's UK policy statement Promoting equality for people with Parkinson's

https://www.parkinsons.org.uk/sites/default/files/policystatement_promotingequality.pdf

Parkinson's Disease – Confusion with Drunkenness

One in four Parkinson's cases mistaken for being drunk

<http://www.bbc.co.uk/news/health-32377890> (video)

People think I'm drunk ... but my Parkinson's symptoms are better if I have a drink

<http://www.dailymail.co.uk/health/article-515147/People-think-Im-drunk---Parkinsons-symptoms-better-I-drink.html>

My mother wasn't drunk – she had Parkinson's

<https://www.theguardian.com/commentisfree/2015/apr/19/my-mother-not-drunk-parkinsons-rudeness-depressed-cruelty>

Similar conditions / Related Disabilities

Tourette syndrome

https://www.tourettes-action.org.uk/storage/downloads/1410791597_Factsheet---disability.pdf

Ataxia

http://www.echo-news.co.uk/news/13785416.I_m_not_drunk_____I_have_Ataxia/

Licensed Trade - Right of Refusal

The 21st Century Right of Refusal

<https://licensinglaws.wordpress.com/2013/01/04/the-21st-century-right-of-refusal/>

Trade should know its rights to refuse

<http://sltn.co.uk/2013/06/13/trade-should-know-its-rights-to-refuse/>

Refusal of Entry

<https://www.popall.co.uk/qanda/the-rules-on-rights-to-refuse-entry.aspx>

Licensed Trade - Standards of Service

City & Guilds Personal Licence Holder's Guide. Scotland: For both on- and off-licence premises. 2014

http://cdn.cityandguilds.com/ProductDocuments/Hospitality_and_Catering/Hospitality_and_Catering/7104/7104_SCQF_6/Centre_documents/Personal_Licence_Holders_Guide_2nd_Edition.pdf

SCLPS or SALPS Certificate

<http://www.personallicencescotland.com/scottish-certificate-for-licensed-premises-staff/>

Further Information

Fife Centre for Equalities (FCE) is an independent charity which emerged from an innovative joint project between Fife Council, NHS Fife and Fife Voluntary Action.

FCE is helping to develop more inclusive and responsive services for people in Fife, and working to build a positive picture of Fife's modern and diverse population.

This briefing and a range of equality and diversity resources, including toolkits and training packages are available on FCE's website. If you have any questions, comments and feedback regarding this publication please get in touch:

Contact

Telephone: **01592 645 310**

Direct Line: **01592 645 313**

Email: **info@centreforequalities.org.uk**

Address: **New Volunteer House, 16 East Fergus Place, Kirkcaldy KY1 1XT**

Website: **www.centreforequalities.org.uk**

Alternative formats

This publication is also available as a Microsoft Word file on the resource section of FCE's website. For information on accessing any of FCE's resources in Easy Read or alternative formats, please contact: info@centreforequalities.org.uk

Generic advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Telephone **0808 800 0082**

Textphone **0808 800 0084**

Hours **09:00 to 20:00 (Monday to Friday)**
10:00 to 14:00 (Saturday)

Post **FREEPOST Equality Advisory Support Service FPN4431**

References

- ¹ Parkinson's Symptoms. Parkinson's UK
<https://www.parkinsons.org.uk/content/parkinsons-symptoms>
- ² Based on 2015 population for Fife of 368,080. NRS
<http://www.nrscotland.gov.uk/files/statistics/council-area-data-sheets/fife-factsheet.pdf>
- ³ Parkinson's Disease. NHS UK
<http://www.nhs.uk/conditions/Parkinsons-disease/Pages/Introduction.aspx>
- ⁴ 'One in four Parkinson's cases mistaken for being drunk'. BBC News
<http://www.bbc.co.uk/news/health-32377890> (video)
- ⁵ Licensing (Scotland) Act 2005. UK Government
<http://www.legislation.gov.uk/asp/2005/16/contents>
- ⁶ City & Guilds Personal Licence Holder's Guide. Scotland: For both on- and off-licence premises. 2014
http://cdn.cityandguilds.com/ProductDocuments/Hospitality_and_Catering/Hospitality_and_Catering/7104/7104_SCQF_6/Centre_documents/Personal_Licence_Holders_Guide_2nd_Edition.pdf
- ⁷ 'The 21st Century Right of Refusal'. Stephen McGowan LLP
<https://licensinglaws.wordpress.com/2013/01/04/the-21st-century-right-of-refusal/>
- ⁸ Equality Act 2010. UK Government
<http://www.legislation.gov.uk/ukpga/2010/15/contents>
- ⁹ Associations, clubs or societies have specific meanings in equality law, depending on size or membership. Full details on EHRC documentation at
https://www.equalityhumanrights.com/sites/default/files/what_equality_law_means_for_your_association2c_club_or_society.pdf
- ¹⁰ 'Equality law - Hotels, restaurants, cafés and pubs' EHRC:
<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-law-hotels-restaurants-caf%C3%A9s-and-pubs>