

# Reasonable adjustments for disabled people – legal certainty or practical reality?

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Under equality legislation, both public and private companies are required to make reasonable adjustments to ensure that disabled people can use their services.

## Equality Act 2010

The [Equality Act 2010](#) imposes a duty on providers of goods, services and facilities to make reasonable adjustments to avoid a disabled person being placed at a 'substantial disadvantage' compared with a non-disabled person when accessing services and facilities.

## What are reasonable adjustments?

[Citizens Advice's website](#) provides examples of reasonable adjustments:

- Providing ramps and stairway lifts;
- A portable induction loop for people with hearing aids; and
- Providing information in alternative formats, such as Braille. In January, the UK Supreme Court gave their judgment in just such a case.
- The *Equality Act 2010* does not prescribe what a reasonable adjustment will be in particular circumstances. So, how is it decided what is a reasonable adjustment in any given situation?



## FirstGroup Plc v Paulley

Doug Paulley, a wheelchair user, tried to board a bus in February 2012. The bus had a space marked by a wheelchair sign and a notice saying, 'Please give up this space for a wheelchair user'. When Mr Paulley tried to board the bus, a woman with a sleeping child in a pushchair was occupying this space. She was asked by the driver to fold



down the pushchair and move, but she refused, stating that the pushchair did not fold down. As a result, Mr Paulley had to wait for the next bus.

Following the incident, Mr Paulley issued proceedings against FirstGroup for unlawful discrimination on the ground of his disability, claiming that FirstGroup had failed to make 'reasonable adjustments' to its policies as required by [Section 29\(2\) of the Equality Act 2010](#).

### Initial proceedings

At first instance, the court found that FirstGroup operated a 'first come first served' policy, whereby a non-wheelchair user occupying the wheelchair space on the bus would be requested to move, but if the request was refused, nothing more would be done. The Recorder concluded that this placed Mr Paulley and other wheelchair users at a substantial disadvantage in comparison with non-disabled passengers.

### Court of Appeal

In the [Court of Appeal](#), FirstGroup's appeal was unanimously allowed. The court held that it was not reasonable to hold that FirstGroup should adjust its policy so that its drivers must require, rather than merely request, that non-wheelchair users vacate a space when it is needed by a person in a wheelchair. It also held that it was not reasonable to positively enforce that requirement with the ultimate sanction being removal from the bus.

### UK Supreme Court

The [Supreme Court](#) unanimously allowed Mr Paulley's appeal, but only to the extent that FirstGroup's policy requiring a driver to simply request a non-wheelchair user to vacate the space without taking any further steps was unjustified. Where a driver who has made such a request concludes that a refusal is unreasonable, he or she should consider further steps to pressurise the non-wheelchair user to vacate the space.

However, the court concluded that an absolute – or even a qualified – rule that any non-wheelchair user must vacate the space would be unreasonable.

### Practicality or certainty?

As can be seen from the courts' judgements, there is considerable disagreement about what is reasonable in any given situation. The Supreme Court's aim in reaching a



decision was to provide clarity, but the judgment seems to highlight the importance of practical reality over legal certainty.

Could this lead to an increasing emphasis on policies and guidance, rather than legislation?

The Welsh Government's approach to reasonable adjustments for disabled people

The Welsh Government's [Framework for Action on Independent Living](#) gives effect to the 'social model of disability', which recognises that people are disabled by the barriers created by society. The guiding principles of policy are:

- to remove these barriers and create an enabling society, and;
- to promote the rights and full inclusion of disabled people.

It also sets out how the Welsh Government is taking forward the implementation of the [UN Convention on the Rights of Persons with Disabilities](#) (UNCRPD), which includes Article 19: the right to independent living, which says that:

- disabled people have an equal right to live in and take part in the community;
- disabled people have the right to the same choice and control as non-disabled people; and
- Governments should do everything they can to ensure disabled people enjoy these rights.

Looking specifically at accessibility and public transport, the Welsh Government's [Framework for Action on Independent Living – 2014–15 Outcome Measures](#) emphasises the importance of the availability and the accessibility of public transport, with the aim of ensuring that disabled people can get to work, participate in family and community events and have access to leisure, culture and public services.

It goes on to explain that the National Survey for Wales 2013–14 asked respondents what their level of satisfaction was with the transport system (on a scale of 1–10, with 10 being the most satisfied). The responses to the question (which included public and private transport, as well as infrastructure such as footpaths, roads, cycle paths) showed that 39% of disabled adults gave a high rating (7 – 10) for the transport system



(compared with 46% for non-disabled adults). The average rating for the transport system was 5.7 (5.9 for non-disabled respondents).

This suggests that there is room for practical improvements to ensure disabled people have to access transport services, especially public transport. The Welsh Government aims to make such improvements by meeting its [Equality Objectives 2016–2020](#).

These include:

Putting the needs, rights and contributions of people with protected characteristics at the heart of the design and delivery of all public services, in particular health and mental health services, education, housing, social services and transport. Along with specifically **ensuring support, and tackling barriers, to enable disabled people to enjoy their right to independent living and have voice, choice and control in their lives.**

The most recent [annual report on equality](#) outlines progress towards this objective, which include “a series of voluntary bus quality outcomes that bus operators will need to achieve in order to receive Bus Services Support Grant from 1 April 2017”.

Welsh Government policies, court judgments or changes to legislation may bring about improvements in the reasonable adjustments made to allow disabled people to access public transport.

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