



Know your Housing Rights *Online Education Series*

KNOW YOUR HOUSING RIGHTS: THE PUBLIC SECTOR EQUALITY & HUMAN RIGHTS DUTY

WHAT IS THE DUTY?

The Public Sector Equality and Human Rights Duty (the **Duty**) requires that public bodies have regard to the need to eliminate discrimination, promote equality and protect human rights when performing their functions.

The Duty stems from Section 42 of the Irish Human Rights and Equality Commission (**IHREC**) Act 2014.

WHAT BODIES HAVE OBLIGATIONS UNDER THE DUTY?

'Public bodies' are defined in the IHREC Act. In the context of housing and homelessness, this includes bodies such as local authorities (including city and county councils), which provide social housing, emergency homeless accommodation and related supports. The Duty also applies to government departments such as the Department of Housing, Local Government and Heritage.

WHO IS THE DUTY OWED TO?

The Duty is owed to many groups that come into contact with, or are impacted by the actions and policies of, public bodies. These include the staff of the body and those to whom the body provides services. For example, local authorities owe the Duty to applicants for social housing.

DOES THE DUTY APPLY TO THIRD PARTIES?

The Duty does not apply directly to third parties, such as hotels providing emergency accommodation, even if they are collaborating with a public body.

However, public bodies are obliged to ensure that equality and human rights obligations are part of the agreements that they enter into. This means that their procurement process and contracts with third parties, for example to provide services like emergency accommodation, should respect these obligations.



WHAT LEGAL FRAMEWORKS DO PUBLIC BODIES HAVE TO CONSIDER UNDER THE DUTY?

Human rights and equality principles come from many sources. Section 29 of the IHREC Act 2014 defines the “human rights” that public bodies must have regard to under the Duty to include:

- rights conferred or guaranteed by the Irish Constitution;
- rights, liberties or freedoms conferred by the European Convention on Human Rights (“ECHR”); and
- other rights, liberties or freedoms conferred or guaranteed by any international agreements or treaties which have been given force of law in the State.

These sources of rights are explored below. Not all international agreements signed by the State are covered – only those that have been give ‘force of law’ through legislation. This means that while the ECHR is included, because it was incorporated into Irish law by the ECHR Act 2003, instruments such as the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Convention on the Rights of the Child are not.

ENFORCEMENT

ARE THERE ACCOUNTABILITY MECHANISMS WITHIN THE LEGISLATION?

The main focus of Section 42 is encouraging self-assessment by public bodies. It requires bodies to take steps to integrate the Duty into their operations including assessing the issues, addressing the issues, and reporting on progress. IHREC has the power to review compliance with the Duty.

CAN PUBLIC BODIES BE SUED FOR FAILING TO FULFIL THE DUTY?

An individual can’t sue a public body specifically for failing to fulfil the Duty. However, individuals can sue for breaches of rights which the Duty aims to protect. For example, a person may take a case that a local authority has unlawfully violated their right to privacy.

RELEVANT EQUALITY LAW SOURCES IN THE DOMAIN OF HOUSING LAW

There are many different sources of human rights and equality law, including the Constitution, domestic legislation (written laws), and international sources such as EU law. This is a summary of some key laws around equality, non-discrimination and rights.

THE EQUAL STATUS ACTS

The **Equal Status Acts** 2000-2018 prohibit discrimination against certain groups in the provision of goods and services, accommodation, education and registered clubs. There are



limited exceptions, such as where the action is required to comply with another law. Breaches of the Equal Status Acts are dealt with in the Workplace Relations Commission.

Section 3 (1)(a) of the Equal Status Acts

Discrimination is “[w]here a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds specified in subsection (2)...”

Discrimination must involve a difference of treatment based on one of the following grounds:

the gender ground: that one is male and the other female;

the civil status ground: that they are of different civil status;

the family status ground: that one has family status and the other does not;

the sexual orientation ground: that they are of different sexual orientation;

the religion ground: that one has a different religious belief from the other;

the age ground: that they are of different ages;

the disability ground: that one person has a disability and the other does not, or one person has a different disability to another;

the race ground: that two persons are of different race, colour, nationality, or ethnic or national background;

the Traveller community ground: that one is a member of the Traveller community and the other is not;

the victimisation ground: that one has sought redress under the Equal Status Acts, has attended as a witness in respect of an application for such redress, that one has opposed prohibited action under the legislation, and/or intends to take any of the said actions;

the housing assistance ground: that one is in receipt of rent supplement (under the Social Welfare Consolidation Act 2005 or housing assistance payment (HAP) under the Housing (Miscellaneous Provisions) Act 2014), or any payment under the Social Welfare Acts.

In relation to housing, local authorities are allowed to treat people differently in relation to particular types of housing based on:

- family size;
- family status;
- civil status;

- disability;
- age;
- membership of the Traveller community [See our publication *‘Know Your Housing Rights: Traveller Accommodation and the Law’* for more on this topic]

COUNCIL DIRECTIVE 2000/43/EC (“THE RACE EQUALITY DIRECTIVE”)

Broadly speaking, the Race Equality Directive prohibits discrimination in the social and economic fields, including in the provision of social housing supports, on the basis of race or ethnicity.

SOURCES OF CONSTITUTIONAL AND HUMAN RIGHTS LAW

CONSTITUTIONAL LAW

The Constitution, Bunreacht na hÉireann, is the fundamental law of Ireland. It recognises many basic human rights, some expressly written in the Constitution (‘enumerated rights’) and some which have been implied (‘unenumerated rights’). Examples of significant rights are listed below.

Right to fair procedures

The Constitution protects the rights of the public to ‘fair procedures’ when dealing with public bodies. This includes the right to be given notice of a decision that may affect you prior to it being made (for example, a decision in relation to social housing) and the right to make the best possible case in reply.

Right to equality before the law

Article 40.1 of the Constitution provides that the State cannot unjustly, unreasonably or arbitrarily discriminate between citizens.

The right to privacy

The right to privacy is an ‘unenumerated right’ which is not written in the Constitution but is assumed to flow from the broad personal rights the Constitution protects.

Children’s rights under the Constitution

Children are a special class of rights holders under the Constitution since the introduction of Article 42A of the Constitution following the Referendum held in 2012. Article 42A.1 affirms the natural and imprescriptible (meaning cannot be taken away) rights of all children. Children also have a right to free primary education under Article 42.4.

EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention On Human Rights Act 2003 gives the ECHR full force in Irish law. **Section 2** of the ECHR Act requires the Courts to interpret and apply statutes and rules of law



(including the Constitution) “in so far as possible, subject to the rules of law relating to such interpretation and application”, in a manner that is compatible with the ECHR.

Like section 42 of the IHREC Act 2014, which provides for the Duty, **Section 3** of the ECHR Act requires that “organs of State”, which includes bodies such as local authorities and An Garda Síochána, perform their functions in a manner that is compatible with the ECHR. *Some of the key rights protected by the ECHR in the context of housing are listed below.*

The right to freedom from inhuman or degrading treatment

Article 3 of the ECHR provides that no one can be subjected to torture or inhuman or degrading treatment. This can be relevant to housing because public bodies’ obligations under Article 3 have been interpreted to include actions that cause individuals substantial hardship or deprivation or force them to live in grossly substandard conditions that endanger their health (see, for example: *Moldovan and Ors v Romania*, application nos. 41138/98 and 64320/01, ECtHR, 12 July 2005).

The right to a private and family life

Article 8 of the ECHR protects the right to respect for private and family life, home and correspondence. Limitations on the right to privacy are only permitted if they meet strict criteria, including that any interference must pursue a legitimate aim, be necessary in a democratic society, be proportionate and be prescribed by law.

Some examples of the protections of Article 8 being invoked in the context of housing include:

- living conditions which impact upon a person’s physical or psychological integrity (see, for example: *O’Donnell v South Dublin County Council* [2007] IEHC 204);
- evictions from land owned by local authorities (see, for example: *Hirtu v France*, application no. 24720/13, ECtHR, 14 August 2020; *Winterstein v France*, application no. 27013/07, ECtHR, 17 October 2013);
- prevention of homelessness (see, for example: *Yordanova and Ors v Bulgaria*, application no. 25446/06, ECtHR, 24 April 2012).

No discrimination in relation to ECHR rights

Article 14 of the ECHR prohibits discrimination in relation to the enjoyment of the various rights and freedoms under the Convention, such as those listed above.

Article 14, ECHR

“The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Not every difference in treatment will be prohibited under Article 14. If there are objective and reasonable justifications it can be permitted. For example, positive actions to address the needs of disabled people or socially disadvantaged groups may result in differential treatment but still be permitted if done correctly.

The Charter of Fundamental Rights of the European Union

Organs of state such as local authorities are bound to uphold the provisions of the Charter of Fundamental Rights of the European Union. However, importantly, the rights provided for in the Charter only apply when the situation falls within the scope of the law of the European Union.

MLRC CONTACT DETAILS

Mercy Law Resource Centre (MLRC) is a registered charity and independent law centre. MLRC provides free legal advice and representation to people who are homeless or who are at risk of homelessness in relation to social housing and related social welfare law. MLRC also provides training and support to organisations that encounter issues in this area of law.

Visit our website www.mercylaw.ie to find out more. You can contact MLRC by phone at **(01) 453 7459** or by email to info@mercylaw.ie.

THE ‘KNOW YOUR HOUSING RIGHTS’ SERIES

This is Module 2 in the 4 part ‘*Know your Housing Rights*’ legal training series. The topics in the series are:

1. *Know Your Housing Rights: Introduction to Social Housing Law*
2. *Know Your Housing Rights: The Public Sector Equality & Human Rights Duty*
3. *Know your Housing Rights: Housing Assistance Payment (HAP) and Homeless HAP*
4. *Know your Housing Rights: Traveller Accommodation and the Law*

Details of online training sessions for these modules, and copies of the other guides, are all available at www.mercylaw.ie/training/KYHR