



Disability Rights UK's Supplementary Submission to the House of Lords Select Committee on the Equality Act 2010 and Disability

4 September 2015

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Introduction

1. Disability Rights UK is a leading pan-disability organisation working for a society where everyone with lived experience of disability or health conditions can participate equally as full citizens. We are disabled people leading change and our top current priorities are independent living and career opportunities. This response has been developed in partnership with disabled people, to which many responded to our calls for supporting evidence via our website.
2. **Liz Sayce OBE made the most significant points Disability Rights UK seeks to make in oral evidence to the Committee. This submission adds to that oral evidence and does not repeat it. We also provide links here to reports mentioned in Liz's oral evidence.**

Accessing Our Rights

3. UK citizens do not have the same connection to their legal rights as people in some other countries, partly because Britons do not have a constitution with which they can identify. The Equality and Human Rights Commission ("EHRC" hereafter) found that 62 per cent of individuals facing discrimination do not know their rights [[Low Commission Report at 1.19](#)]. A similar number, furthermore, do not know the relevant claim procedures. Anybody at any time can find themselves in unexpected tribulations, either as a one-off incident or a series of interrelated problems. Many problems will be difficult to resolve and may need legal intervention. They can have profound consequences for individuals, their communities and the state if left unresolved.
4. Public law education is needed now more than ever as the recent heavy cuts to Legal Aid take away essential support in accessing rights. Heavy cuts in legal aid each year means that those in welfare benefit and family disputes, people in need of help sorting debt demands and individuals who have housing problems often cannot get the legal help that they need. Rights and justice can, as a result, be delayed or denied because of a lack of funding. This allows justice to be bought and sold.
5. Our research shows that when armed with knowledge of rights, disabled people can at times negotiate successfully for adjustments and equality, without needing to go to court or

a tribunal: see for instance Radar (2010) Doing Careers Differently (see <http://www.disabilityrightsuk.org/how-we-can-help/publications/doing-life-differently-series/doing-careers-differently>), through which disabled people shared tips including how to use their rights to progress at work. And DR UK runs a successful leadership programme, through which disabled people share experience of barriers and – in detail – how to overcome them, see <http://www.disabilityrightsuk.org/how-we-can-help/leadership/leadership-academy-programme-year-1>. Our members, however, report repeated and frequent access barriers; lack of advice and support (as reported by the Low Commission) and no access to legal advice. Disabled people are also less likely to have internet access than other citizens so even that source of information can be more difficult to obtain.

Recommendation

6. ***As indicated by the Low Commission, good public legal education is needed in schools and adult learning schemes in order for people to know their rights and where to go for help. This would provide the general public with the knowledge, confidence and skills needed to deal with law-related issues so that people are better able to help themselves and are less likely to end up in a court or tribunal.*** This needs to become part of our culture and should start at an early age as part of our national curriculum. This will allow young people to have legal knowledge, skills and confidence that they can take with them into society and share with family and friends, who can benefit from their knowledge. Public legal education enables people to manage common problems such as debt, benefits, consumer rights, discrimination, housing, employment problems and divorce. These issues can have a massive impact on people's lives. Research shows that many people worry about their problems most of the time but do not know what to do or where to go for help. The people who are hardest hit are often those who already experience some disadvantage, for example disabled people, people with literacy problems, homeless people and older people. By building rights awareness, skills and confidence public legal education can help people access services, secure their housing and employment rights and help them to seek redress when things go wrong. The law should no longer be a distant notion and instead be a tangible tool in everyday life. We also support an increase in reliable on-line information, as recommended in the 2014 report.
7. ***The EHRC should invest in working in partnership with disabled people's organisations to share and promote information and advice, so that disabled people become better able to negotiate for their own rights in practice; and the EHRC should track use of rights in practice.*** They could also, as the Disability Rights Commission used to do, offer to provide letters and briefings on headed paper to validate legal points to support disabled people challenging discrimination or negotiating for adjustments.
8. ***Government should introduce a one-stop information and advice point, similar to the Australian Job Access service, that offers free information and Helpline advice to both disabled people and businesses (particularly small businesses) on everything to do with disability access and employment.*** When individuals and businesses can access advice at the moment that they need it, they are more likely to find solutions that support disabled people's equality and participation. See <http://www.jobaccess.gov.au/> for the thousands of pages of information on the Australian site.

Substantial Disadvantage and the Duty to Provide Reasonable Adjustment: The Need for Clarity

9. The reasonable adjustment duty requires substantial disadvantage caused by a practice, criterion or provision (“PCP”). It appears unclear to whom the disabled person should be compared and whether a comparison is necessary in order to discover whether the disabled person is at a substantial disadvantage, especially given that it is not required by systems like the United States (“US”). There have been, as a result of the confusion, different understandings of the comparator.
10. In *Smith v Churchill Stairlifts*, the court said that comparison is to be made to a non-disabled person who is not placed at a disadvantage by the same PCP. In *Royal Bank of Scotland v Ashton*, on the other hand, it was said that the comparator would be a question of fact and a judgment as to whether the claimant was disadvantaged. The court added that all persons affected by the PCP should be considered the appropriate comparator, as opposed to only those who are not disadvantaged by the PCP. Yet another approach was taken by Baroness Hale in *Redcar and Cleveland Primary Care Trust v Lonsdale* as she considered the comparator as ‘non-disabled people generally’. This approach does not require a search for a non-disabled person affected by the PCP.

Recommendation

11. The Redcar judgement is a step in the right direction as a comparator is unnecessary. ***Not requiring a comparator avoids the complex discussions as to how an appropriate comparator should be found. Consideration could instead focus on whether a PCP, when performing a function or job, substantially disadvantages the concerned disabled person. With this approach, a comparator would not be required when determining whether the concerned disabled person is disadvantaged as it would be evident from the case facts. This approach would also allow the duty-bearer to seek alternative methods of providing reasonable adjustment, as illustrated in the Archibald case.*** The US takes a similar to approach where one does not have to look to a non-disabled person to know whether a disabled person needs reasonable adjustment. This demonstrates that a comparator is not required for the duty to provide reasonable adjustments to be successful. We would be happy to discuss this issue further with the Committee.

Keeping Government Support Linked to the Duty to Provide Reasonable Adjustment

12. Access to Work assists disabled people to seek employment or remain in work, resulting in reduced out of work benefits, medical costs and supported social activities, and therefore cost savings. It also creates paid roles for others to help the disabled person, such as support workers and interpreters. Employment also allows disabled people to lead more active and healthier lifestyles. Access to Work truly supports disabled people’s independent lives and applies to all employers and does not have an upper limit, with the exception of governmental ministerial departments.
13. The Access to Work scheme, however, has not escaped changes stemming from restrictions in public spending. A cap has been placed on individual awards from October 2015; and certain equipment such as analogue hearing aids, voice activated software and desk raisers are no longer provided. This, therefore, may prevent a disabled person from accessing work, forcing her to claim benefits and contribute to the unemployment rates.

The cap means that Access to Work will only provide awards up to a limit set at one and half times average salary from October 2015. This is a limit of £40,800 per person per year, which will be updated annually in line with the level of average salaries.

14. Access to Work in its current form helps us move towards fair and inclusive economic opportunities, promoting sustainable growth by enabling a broad range of people to be in employment. Placing more responsibility on employers for supports and adjustments risks deterring employers from employing disabled people. For the government, however, Access to Work is a good investment and makes economic sense, as for every £1 spent on Access to Work the Exchequer recoups £1.48. Expanding the programme would ensure that employers are more responsive towards employing disabled people because government in effect remove the perceived disincentives for employers. The government, at the same time, can enable more people to reduce their needs for out of work benefits, as well as achieving other savings through reduced use of health services.
15. Without Access to Work, employers in effect may be expected to pick up the costs of adjustments that are not 'reasonable', particularly in the case of small employers. DR UK's 2015 report on Access to Work showed that placing pressure on job seekers to expect their prospective employer to fund their support or equipment led to huge stress just at the time that disabled people seek to settle in to a new job: see <http://www.disabilityrightsuk.org/news/2015/april/access-work-call-members>

Recommendation

16. **We need commitment to strong and long-term investment into Access to Work in order to support more people to get a job, self-employment opportunity or keep their employment.** Liz Sayce OBE, Chief Executive of Disability Rights UK, proposed doubling the numbers of recipients in her 2011 report. In order to get disabled people into work and reduce their need for out of work benefits, we need the Government to set clear success measures and publish progress against them, including numbers, the diversity of people supported and the impact Access to Work is having on getting and keeping jobs. We must also address some specific difficulties with support for self-employed people, people with fluctuating conditions and mental health or learning difficulties. We must also work towards greater satisfaction amongst disabled people and employers with the process, the quality of customer service, the process's timeliness and individual experience.

The Effectiveness of the Public Sector Equality Duty

17. Disability law (ie the DDA 1995) broke new ground in expecting people to be treated differently in order to secure equal outcomes (through the reasonable adjustment duty); and the Public Sector Duty takes that principle further, moving away from just redress after the event to proactive, systemic change. In the early period of the Disability Equality Duty, brought in under the DDA 2005, we identified significant success stories, where disabled people had been truly engaged in co-producing new solutions to policies and services – see <http://www.disabilityrightsuk.org/how-we-can-help/publications/lights-camera-action>. In 2014, DR UK published guidance on Inclusive Communities, providing a range of examples in which public sector bodies worked in co-production with disabled people to promote inclusive policies – from planning to education – see <http://www.disabilityrightsuk.org/policy-campaigns/reports-and-research/inclusive-communities>

18. Since the Public Sector Equality Duty has replaced the Disability Equality Duty we continue to know of good examples of its use, and support the duty as a fundamental tool in promoting systemic change. However, the lack of requirement for 'engagement' and the discretion allowed to select outcomes can mean that disability equality is sidelined, especially in a period of resource restriction – when disadvantaged groups can end up competing over diminishing funding and staff attention. We do not see the level of promotion of the Public Sector Duty that was the case when it was first introduced: its implementation cannot be left to committed junior staff; it requires leadership from the highest level across government and the whole public sector, and all those agencies with which it contracts.

Recommendation

19. ***We recommend that consideration be given to replacing 'due regard' with 'to take steps towards', which is found in the United Nations' International Covenant on Economic, Social and Cultural Rights and other proactive duties.*** Although the 'due regard' approach has the potential to ease the regulatory resistance generated by "command and control", a duty 'to make steps' imposes an obligation on the state to act and improve the situation and it is easier for the courts to apply. It could ensure that the public sector more consistently moves forward from minimal compliance and encourage it to really think about its duty.
20. ***The public sector also needs much greater promotion and attention in relation to disability.*** Disability is different from some other protected characteristics in that it often requires positive action and money to be spent in order to achieve equal opportunity. This often leads to disability being avoided. The duty should, therefore, afford greater protection to disability in light of the positive obligation placed upon duty-bearers to ensure compliance with the Act's provisions. This requires leadership right across Government and the public sector – and amongst organisations with which the public sector and government contract.

Transport on Buses: The Missing Piece

21. The Act's failure to provide fresh and unitary guidance on the wheelchair space on buses is a missed opportunity to ensure that wheelchair users, in their quest to lead independent lives, can use the space. Wheelchair users are often left at the bus stop after several buses have passed and denied access because of buggies, baggage and people standing in their space. This negatively affects their ability to get to work as journey times become unpredictable, particularly during peak times. This can also make accessing jobs further away more difficult as the ability to make transport connections is hampered. Independent and stress-free social time also becomes more challenging, especially when they cannot use other public transport available to non-disabled people. The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 are also being disproportionately used against disabled people. Buses are often overpopulated, even without a wheelchair user on board, but more passengers are permitted to enter the bus. It appears to be discriminatory to refuse access to a wheelchair user when, at the same time, more non-wheelchair users are let onto the bus. Similarly, a wheelchair user is often refused access when there are one or more buggies in the wheelchair spot. When a wheelchair user is in their space, however, buggies are often allowed on-board. These regulations are, therefore, being applied discriminatorily in favour of non-wheelchair users. This cannot continue and further legislative guidance is needed.

Recommendation

22. ***The wheelchair space was created to allow wheelchair access to the bus. It was not created for extra standing capacity, buggies or baggage. The current provisions imply that wheelchair users can only use the space when it is convenient for everybody else. That is not true equal opportunity.*** Usually, the preferred solution is for agreement amongst passengers and this often occurs. However, at other times wheelchair users are being unfairly denied when others would not be refused access. Buggy users and those with baggage need to understand that they cannot use the space if a wheelchair user needs it. Non-wheelchair users have greater options available to them as they can decide to fold their buggies in favour of vacating the bus and they can use public transport unavailable to wheelchair users. New provisions are needed to give effect to the space's intended use and give wheelchair users guaranteed use of the space, unless a wheelchair user already occupies it or it is needed for an emergency.

The Housing Gap

23. Disability Rights UK and Habinteg Housing Association are concerned that the new housing standards, to be introduced from October 2015, may reduce the supply of high quality accessible homes. This has obvious implications for disabled people's equality and independent lives, as a lack of accessible properties makes it harder to find your own home that provides shelter, freedom, control and privacy. Although there is a 124-page impact assessment of building process costs with the consultation documents, the impact on equality between people has not been published. Habinteg's specific response to the consultation can be read here: http://www.habinteg.org.uk/mediaFiles/downloads/103251243/Summary_Response_Housing_Standards_Consultation.pdf

Recommendation

An equality assessment should be published if it has been conducted or Ministers should set out their timetable for conducting and publishing such an assessment. The Equality Act 2010's provisions dealing with adjustments to common parts of a residential building should also be brought into force. There needs to be greater enforcement of access and reasonable adjustment provisions, particularly in respect of the private sector.

Disabled Political Office Holders: Opening the Doors

24. Disabled people are lacking representation in Parliament to the extent where Members of Parliament ('MP') statistics are not recorded as they are with gender and race. The Equality Act has exemptions in Schedules 6 and 18, which prevents political office holders from benefitting from adjustments that would make the role manageable. Requiring MPs to work full time is a barrier that can prevent a disabled person from standing for elected office as they may not be physically and/or mentally able to manage the demands of the role.

Recommendation

25. ***The law ought to be changed to allow MPs to job share as a reasonable adjustment to the existing practice of only allowing one person to represent each constituency in Parliament.*** Job sharing has for a long while now allowed disabled people to balance their lives with other working roles. This would allow for the retention of valuable talents and the diversity of experience that brings greater innovation and insight to private, public and third sector organisations. Making this change would also work towards satisfying

Article 29 (a) of the United Nations Convention on the Rights of People with Disabilities that obliges the UK to facilitate Disabled people holding office and participation in public affairs.

Equality and Human Rights Commission: Supporting and Furthering Disability Rights

26. Replacing the separate Equal Opportunities Commission, Commission for Racial Equality and the Disability Rights Commission with a wider Equality and Human Rights Commission were rational in that people cannot be boxed into single identities. The Commission has enjoyed some small success in creating a debate and a narrative. *From Safety Net to Springboard* is an example such work, which re-framed the purpose of social care as enabling full participation – not offering residual care. They have also gathered evidence to influence change such as *Hidden in Plain Sight*, a formal inquiry into disability-related hostility, harassment and hate crime. However, there has been relatively little active strategic work with partners in the disability sector, little by way of publicised strategic litigation on disability, and therefore relatively little confidence externally in progress on disability equality. The Disability Rights Commission, for example, produced codes of practice through consultation with disabled people, the Federation of Small Businesses, unions and parents organisations amongst others, leading to widespread dissemination, distribution and ownership. This would be a method worth exploring.

Recommendation

27. ***The EHRC's Disability Committee, a statutory decision-making committee, needs to be more prominent in order to have greater public recognition. This would allow disabled people to view the Committee as a strategic enabler and enforcer of equality, in the same way they could with the Disability Rights Commission.*** The Committee also needs greater resources allowing it to make a bigger impact on the rights of disabled people through better engagement and consultation. One simple thing it could do is to publish regular updates on significant litigation on disability equality to both disabled people's organisations and employers and service providers.

Enforcing Our Rights

28. Enforcing our rights is difficult because of lack of access to justice, as discussed above. Accessing the courts and tribunals to give effect to our legal right is a challenge. A case involving goods and services would most likely be taken through the small claims process, which requires filling out forms, mediation and financial resources. The employment tribunals have similar obstacles and also incur higher court fees for discrimination cases. This makes it more difficult for disabled people, who often have lower incomes and are at greater risk of poverty, to access justice.

Recommendations

29. ***It would be helpful for the EHRC to work strategically with all the inspection bodies and ombudsmen - to embed the promotion and enforcement of the Equality Act as it relates to disabled people into all the existing complaints procedures and appeals processes. For instance, in health and social care there are proposals to create a single, streamlined complaints process and ombudsman; if this whole body was charged with resolving complaints about discrimination and disputes over adjustments, that could significantly extend and simplify processes of redress and resolution for disabled people.*** Clear and well-publicised joint agreements with bodies

from the Care Quality Commission to Ofsted would similarly give confidence that inequalities and inspectorates would pick up discrimination.

30. ***Consideration could in principle be given to a disability ombudsman, as an expert means of enforcing disability rights, free to the complainant, by hearing complaints and considering the facts of each case as presented by both the disabled person and the accused.*** Such an initiative would need to be integrated with Ombudsman services overall. They could also use their experience to help professionals to adhere to good practice, which should reduce the number of complaints. They could also assist with improving internal complaint-handling processes where undesirable behaviour does occur. To prevent clogging the system, complainants would have to exhaust all relevant complaint mechanisms within the accused company and then seek advice from the ombudsman. This will ensure that a solution is found without confrontation and those who need help finding justice will get such assistance.

Conclusion

31. Legislation is a powerful tool for setting cultural change and we have recommended measures for positive change that will steer towards the equality of disabled people: in particular, a greater focus on systemic change, on enabling disabled people to use their rights in practice and on enforcement of rights. We look forward to the Government's response to the Committee, to which we offer our ongoing support in the interest of disability equality as the bedrock of a fairer society.

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