



ROFA's submission to the Lords Select Committee inquiry on the Equality Act and Disability

<http://www.parliament.uk/business/committees/committees-a-z/lords-select/equality-act-2010-and-disability/news-parliament-2015/call-for-evidence/>

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Introduction

ROFA

Reclaiming Our Futures Alliance is a grassroots collaborative network of Deaf and Disabled People's Organisations and campaign groups throughout England.

ROFA welcomes the opportunity to submit evidence to the Lords Select Committee inquiry on the Equality Act and Disability.

This written submission has been drafted specifically to address the impact of the Equality Act 2010 on Disabled people's independent living.

Context

The equality gap between Disabled and non-disabled people is widening.

Research has shown that Disabled people have been impacted by austerity measures nine times harder than the average UK citizen. For Disabled people with high support needs that figure rises to nineteen times harder.¹

Rights and equality for Disabled people are regressing in the UK for the first time. In 2005 the Improving Life Chances of Disabled People report produced by the Cabinet Office set a target for achieving full equality for Disabled people in the UK by 2025. The current trajectory of UK disability policy is moving further away from rather than towards that goal.²

1. Impact of the Equality Act 2010 on Disabled people's right to independent living

1.1 Disability equality in the UK is regressing. The Equality Act 2010 has an essential role to play in protecting equality of opportunity for Disabled

¹ <http://www.centreforwelfarereform.org/library/by-date/briefing-on-how-cuts-are-targeted.html>

² <http://www.disabilityrightsuk.org/sites/default/files/pdf/IndependentLivingStrategy-A%20review%20of%20progress.pdf>
<http://www.disabilitynewsservice.com/choice-and-control-have-plunged-under-tories-say-government-figures/>

people but a number of measures are needed to make it more effective, particularly regarding Disabled people's right to independent living.

1.2 Currently the Equality Act does not fully support the 12 Pillars of independent living, (see Appendix), nor does the Equality Act support all the Rights under the UN Convention on the Rights of Persons with Disabilities,³ which the UK ratified in 2009. Article 19 of the UNCRPD⁴ states Disabled people's right to, '*full inclusion and participation in the community*'. There is no definition of inclusion in the Equality Act and as a result Disabled pupils and student can be segregated into special education units and schools, institutionalised in hospital units or residential homes and excluded generally from society. The human right to live independently with all necessary support is fundamental to equal life chances, equality of opportunity and real and lasting inclusion for Disabled people. That right must start from the beginning and be recognised and protected through childhood and into adult life. Disabled people continue to experience barriers in numerous areas including communications, employment and health as shown in Inclusion London's evidence to the inquiry. Please see the submission from ALLFIE for more information about the Equality Act in relation to education and disabled pupils and students in the context of Article 24 of the UNCRPD.⁵

1.3 The impact of the closure of the Independent Living Fund (ILF) at the end of June 2010 has starkly evidenced dramatic regression in Disabled people's independent living. Former ILF recipients who had access to opportunities including education, employment, family life and community participation are now facing cuts to their support packages to "level down" to the amount and types of social care support available through Local Authorities.⁶

1.4 According to Article 19 of the UNCRPD 'Living independently and being included in the community', the state should take action to ensure that Disabled people's independent living includes:

³ <http://www.un.org/disabilities/default.asp?id=259>

⁴ <http://www.un.org/disabilities/default.asp?id=259>

⁵ <http://www.allfie.org.uk/>

⁶ <https://www.uea.ac.uk/about/-/uea-research-shows-disability-support-payments-short-change-disabled-people>
<http://www.disabilitynewsservice.com/disabled-woman-loses-all-but-one-of-49-hours-of-ilf-support/>

- *'full inclusion and participation in the community'*;
- *'the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement'*;
- *access to 'in-home' and 'other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.'*⁷

1.5 A complaint launched against the closure of the ILF to new applicants in December 2010 as a breach of Article 19 and the right to independent living under the United Nations Convention on the Rights of Persons with Disabilities is currently being investigated.⁸ It is also understood that the UK is being investigated by the UN for grave and systematic violations of Disabled people's rights.⁹

2. Public Sector Equality Duty

2.1 The contribution of the Public Sector Equality Duty (s.149 EA 2010) is significant because people can use it to stop a discriminatory policy in its tracks without individuals having to bring claims after the event. This can help to prevent the distress that experiences of discrimination cause to individuals and their networks and also saves time and resources in the long run, replacing the potential for numerous individual claims with a single legal challenge. It also makes public authorities think about what the impact of their proposed policies will be, and in some instances, change their minds about a policy or service that would have adverse consequences.

2.3 The limitation of the PSED is that it is entirely process driven. It cannot stop discrimination from occurring, so long as the public authority can prove it has paid "due regard" to the equalities impact.¹⁰

⁷ <http://www.un.org/disabilities/default.asp?id=279>

⁸ <http://dpac.uk.net/2015/03/uk-disabled-people-appeal-to-the-un-over-independent-living-fund-closure/>

⁹ <http://www.independent.co.uk/news/uk/politics/un-to-investigate-uk-over-human-rights-abuses-against-disabled-people-caused-by-welfare-reform-10478536.html>

UNCRC takes a progressive approach to the realisation of rights. Breaches occur when a state regresses, irrespective of comparisons with other states.

¹⁰ <http://www.leighday.co.uk/News/2013/July-2013/Bedroom-Tax-Judgment-to-be-appealed>
<http://dpac.uk.net/tag/scott-moncrieff-associates-and-deighton-pierce-glynn/>

2.4 It is also possible for public authorities to get away with doing little more than pay lip service to the PSED without properly engaging with what the duty means in law or the material impact of proposed policy on Disabled people on the ground. Campaigners believe it would have been entirely feasible for the government to carry out a more detailed and in depth assessment of the likely impact of the closure of the ILF. However the judgment in R (Aspinall) v SSWP¹¹ upheld the Minister's decision to close the Fund which went ahead on 30 June 2015. We are concerned that the duty to take 'due regard' of the impact of a policy is too weak, as this judgement indicates. So we recommend that the duty to take 'due regard' is strengthened. The impacts since the judgement have been as campaigners predicted and a number of Local Authorities have allegedly breached their duties under the Care Act 2014. A string of individual legal cases against Local Authorities is now underway with many more likely to follow.

2.5 Recommendation 1: for a review to be carried out of what data is collected and analysed at both local and central government levels necessary to monitor and evaluate Disabled people's access to independent living and assess equalities impacts.

2.6 There is also a significant gap in understanding in organisations that aren't public authorities but are exercising public functions and should therefore be meeting the duty.

2.7 Recommendation 2: awareness raising to be carried out to ensure all organisations responsible for distributing Government money and providing services for Disabled people are informed about their duties under the PSED.

2.8 Recommendation 3: The duty to pay 'due regard' to the impact of a policy that impacts on Disabled people is strengthened.

3. Equality and Human Rights Commission

¹¹ <http://dpac.uk.net/tag/scott-moncrieff-associates-and-deighton-pierce-glynn/>

3.1 The EHRC has made a number of significant interventions in key cases taken under the PSED over recent years.¹² This has proved an effective function of the EHRC in contributing to the impact of the Equality Act 2010 on Disabled people.

3.2 Recommendation 3: EHRC to continue supporting and intervening in cases taken under the PSED in relation to equalities impacts on Disabled people.

4. Gaps in other areas of law

4.1 Equality of opportunity for Disabled people is regressing as a result of government policy. The Equality Act 2010 is not able to adequately protect against this as it regulates the processes by which policy decisions are taken but has no powers to stop policy itself that discriminates.

4.2 In order to maintain and progress disability equality, Disabled people's right to independent living needs to be protected in domestic legislation.

4.3 Recommendation 5: The UNCRPD to be enshrined in domestic legislation.

4.4 The Equality Act 2010 can only be effective so long as Disabled people have access to justice to take cases under it. Recent changes to legal aid have made it more difficult for individual Disabled people to take judicial reviews.

¹² [Stuart Bracking and others v Secretary of State for Work and Pensions](http://www.bailii.org/ew/cases/EWHC/Admin/2012/2967.html) <http://www.bailii.org/ew/cases/EWHC/Admin/2012/2967.html>
<http://www.cpag.org.uk/content/government-loses-disability-benefit-case-appeal-court> *Burnip v Secretary of State for Work and Pensions* (CA) [2012] EqLR 701;

4.5 Recommendation 6: Reverse changes to legal aid that have increased barriers to Disabled people's access to justice.

6. Summary of recommendations

ROFA makes the following recommendations:

1. For a review to be carried out of what data is collected and analysed at both local and central government levels necessary to monitor and evaluate Disabled people's access to independent living and assess equalities impacts.
2. Awareness raising to be carried out to ensure all organisations responsible for distributing Government money and providing services for Disabled people are informed about their duties under the PSED.
3. The duty to pay 'due regard' to the impact of a policy that impacts on Disabled people is strengthened.
4. EHRC to continue supporting and intervening in cases taken under the PSED in relation to equalities impacts on Disabled people.
5. UNCRPD is enshrined in domestic legislation.
6. Reverse changes to legal aid that have increased barriers to Disabled people's access to justice.

7. Appendix

The 12 pillars of independent living:

1. Appropriate and Accessible Information
2. An adequate income
3. Appropriate and accessible health and social care provisions
4. A fully-accessible transport system
5. Full access to the environment
6. Adequate provision of technical aids and equipment
7. Availability of accessible and adapted housing
8. Adequate provision of personal assistance
9. Availability of inclusive education and training
10. Equal opportunities for employment
11. Availability of independent advocacy and self- advocacy
12. Availability of peer counselling

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