

Whose risk is it anyway?

No napkins... elderly might eat them.

Health and safety rules were invoked to halt the distribution of free napkins printed with safety tips with meals on wheels in part of Gloucestershire, after organisers were warned that there should have been a risk assessment of choking hazards.

The Guardian, 13 April 2005

Risk, it appears, lurks everywhere and no stone is left unturned in our apparent desire to hunt it down and eliminate it. Where it doesn't exist, imaginations run riot in order to identify all the possible things which could happen. Nothing appears to stand in the way of stamping out risk – not our liberty, cost, efficiency, the truth and not, it seems, ridicule.

Between April and July 2002, over 400 crimes concerning bogus doorstep callers were reported in Gloucestershire. The victims were predominantly women over the age of 70 – exactly the profile of most 'meals on wheels' recipients needing to be targetted with safety tips. Contrast this with the fact that between 1978 and 2002 there was one accident where a person choked on a napkin in the whole of Britain – a new born baby who survived the incident.

Tewksbury Crime and Disorder Partnership group's development manager, Debbie Kemp, said: "We were discussing it at the meeting and it was brought to our attention that we should consider health and safety issues. Things were put on hold while we checked the rules and made sure the napkins were safe."

Pat Scannell of Gloucestershire Pensioners' Forum said: "To risk-assess a napkin is utterly ridiculous and an unnecessary cost to the taxpayer". Fortunately the napkins were eventually assessed as 'perfectly safe' and the scheme went ahead.

The perfect excuse?

'Risk' in one form or another underpins almost every area of disadvantage in disabled people's lives, with serious ramifications for independence and equality. 'Risk' stops disabled people from entering buildings or travelling. 'Risk' stops disabled people from determining their own lives. 'Risk' stalls the opportunities for disabled children to develop into effective adults. 'Risk' leads to huge waste in our public services, diverting money away from citizens and tying it up in red tape. 'Risk' is used to discriminate.

Clearly, all individuals should have the right to reasonable protection from harm in the workplace, and it's the duty of all service providers to ensure that their customers are not placed at unreasonable levels of risk in using their services. Disabled people may require specific adjustments and additional support in order to identify and manage risks.

The purpose of risk analysis and management is to open up opportunity and to enable progress to be made with greater certainty, and this applies on disability just as much as in other key areas of modern life.

However, for disabled people, the sensible management of risk frequently turns into wholly disproportionate steps to attempt to completely eliminate risk, leading to diminished opportunities across life.

It's time for a grown up debate.

Taking the plunge

Earlier this year the hardy swimmers of Hampstead, North London, won the right to swim all year round in the swimming ponds of Hampstead Heath. They'd been previously told by the Corporation of London that allowing them to risk the waters during the winter months without a lifeguard present could expose the Corporation to prosecution by the Health and Safety Executive.

But Mr Justice Stanley Burnton declared that this was a misinterpretation of the law. Granting the swimmers permission to swim unsupervised would not, of itself, render the corporation liable to prosecution: "If an adult swimmer, with knowledge of the risks of swimming, chooses to swim unsupervised, the risks he incurs are the result of his decision and not of the permission to swim."

Yet a disabled woman in the North East who made a request to her social services department for a grab rail to support her walk from the garden gate to her front door was turned down by social services on the grounds that installing the grab rail was too risky because she might fall while using it.

In essence, the issues shaping this decision are the same as those which led the Corporation of London to refuse permission for people to swim unsupervised in the Hampstead pond – the fear of legal liability if something goes wrong. In which case – better to take no action at all.

For disabled people, it's not just the way health and safety legislation is interpreted which leads to such restrictions on personal freedom. Disabled people requiring community care services get caught in a mess of risk-averse policy and practice, distancing them further and further from any chance of independence and control over their own lives.

Firstly, legislation governing social care characterises those who require services as 'vulnerable' and effectively questions their competence to exercise sound judgements about risks in their own lives. Secondly, eligibility for services hangs on the extent to which individuals are deemed to be 'at risk'. Thirdly, the law places a 'duty of care' on public authorities in charge of social services to protect the 'vulnerable' from risks. Despite the fact that local authorities are required to assess risks to people's independence if they fail to provide services, the final nail in the coffin comes from the way in which health and safety legislation is interpreted. This is frequently in a manner which completely constrains the way services can be provided in order to protect social services authorities from the risk of litigation, whether such a risk is real or not.

The grab rail example shows how the notion of vulnerability, the 'duty of care' and social services' fear of litigation lead to a completely illogical conclusion which denies disabled people independence.

Legislation effectively shifts the burden of managing risk onto public authorities, who, rather than supporting people to manage risk, instead feel compelled to attempt to eliminate all potential risks. In doing so they deny disabled people the chance to lead an independent life – in which a reasonable level of risk is a normal part. Unless this changes, positive developments such as the Disability Discrimination Act, the Human Rights Act and the Mental Capacity Act will continue to be undermined.

Public authorities should value freedom as highly as safety. When disabled people can control their own services, and take risks, the effect can be liberating. To quote Julia Winter, a disabled woman, 'with direct payments you can say "it's a lovely day: let's not worry about the housework, let's go out!" You can be spontaneous. You can live.' (Guardian 14 April 04).

Light bulbs and red tape

In her book 'The Moral State We're in' Julia Neuberger asks how many social workers it takes to change a light bulb. She finds that the answer is four – one to change the light bulb, one to hold the step ladder, one to turn the electricity on and off and one to sit with the client. This ridiculous situation is again borne of averting 'risk'.

The inefficiency involved is obscene, especially in a system where financial shortfall has been used as the reason for charging many disabled people to have their most basic needs met. The comedian Laurence Clarke has calculated that on average disabled people needing assistance to use the toilet pay 98p for the privilege of every visit. If all the money was freed up – which is currently tied up in eliminating what for most of us are everyday levels of risk – the improvement in cost and level of services to disabled people would be incalculable.

Risk to care staff from manual lifting was the reason one woman had slept in a wheelchair for months. Ms Wolstenholme who weighed seven stone stated that when five health officials visited her to decide if they could use slings or hoists to lift her she fell: "I asked them for help. They did not. They watched me crawling on the floor". In a recent speech on risk, the Prime Minister referred to such situations as 'absurd'.

While the issue of regulatory burden has become a major concern to business and the public sector, disabled people continue to face acres of red tape in simply accessing the support and assistance required to lead an ordinary life, sometimes paying for services which, due to the influence of 'risk', fail to deliver.

No escape?

...and we were left with about 20 people in a variety of situations. Wheelchairs, walkers, crutches, walking-casts...the works...I matched each disabled, elderly or just plain tired office worker to an appropriate group of firemen and sent these groups on down...the last person to leave that glass walled office was a 59 year old Brooklyn grandmother named Josephine Harris...far as we could tell, she'd be

the last civilian to make it out of that building, and that was something worth celebrating, worth taking good care over those final floors.

Last Man Down – The fireman’s story of September 11, Richard ‘Pitch’ Picciotto

A common case made to refuse wheelchair users, people with mobility impairments and blind and partially sighted people access to buildings is that they present a ‘fire hazard’. Disabled people are believed to be so impossibly difficult to get out of a building in an emergency, or considered to pose so great a risk to others in such situations, that the answer is frequently to refuse access altogether on ‘health and safety’ grounds.

Contrast what happened on September 11 with the fact that during the British firefighters’ strike of 2002 a significant number of building managers blocked disabled people’s access to workplaces and other venues on grounds that they believed the fire service to be wholly responsible for their evacuation – not only discriminatory but a thorough derogation of responsibilities which should be a concern to everyone.

Such interpretations are a perversion of the aims of health and safety legislation and responsibilities. Disabled people are not in themselves a health and safety risk. It’s those who characterise disabled people in this way and who fail to comprehend their responsibilities and discharge them effectively who must bear this label.

Risk is a four letter word

Getting disabled people off incapacity benefit and into work has become one of the top political priorities of our age, yet risk in all its guises continues to thwart this goal.

Between December 1996 and September 2000, of cases of disability discrimination heard by Employment Appeal Tribunals, over half of cases where an employer sought to rely on the defence of justification, health and safety was cited.

It’s suggested that this figure represents only the tip of the iceberg and that health and safety operates as a subtext behind many more disability discrimination cases.

The actual reasons are diverse, but include fears of legal liability for harm to disabled individuals from recruiting them, or that individuals are seen as posing a risk to the public or their fellow employees.

For example, in *Morgan v London Borough of Islington* the applicant for a post as an architectural assistant had asked for a couch in his office so that he could work lying down, this being his chosen method of pain control for a back condition. The employer refused to make the adjustment after receiving medical advice from its occupational health advisor and a consultant orthopaedic surgeon that long periods spent lying down could be detrimental to health. It considered that it would be legally liable for harm resulting from an unsafe system of work.

A common thread running through many cases is the assumptions concerning risks made by employers without any recourse to evidence or consultation with applicants or employees. In the above case, the employer’s justification defence succeeded at tribunal, but on appeal the Employment Appeals Tribunal held that the tribunal had been too readily swayed by the employer’s fears of legal liability and had failed to pay sufficient attention to whether the reason given was, on the medical evidence before it, a material and substantial one.

As in other areas of life, there is a clear tension between health and safety protectionism on the one hand, and non-discrimination on the other.

They need locking away

Society views disabled people as 'vulnerable'. Conversely, they are also considered to pose a considerable risk to others. For example, a deaf woman was refused entry to a dentistry course on the grounds that she wasn't fit to practice. The reason given was that she would not be able to hear if a patient screamed out in pain.

While the rights of individuals must always be judged in the context of the rights and wellbeing of others, disproportionate action is frequently taken about the risk disabled people are presumed to pose, often denying disabled people equal opportunities, and in some cases human rights. These issues dig deep into society's assumptions and fears about disability.

The British Institute for Brain Injured Children have discovered numerous cases of children with autism and other psychological disorders being targeted with anti-social behaviour orders (ASBOs). These include the case of a 15 year old boy with Asperger's Syndrome who was given an ASBO stating he was not to stare over his neighbour's fence into their garden and one issued to a young person with Tourette's syndrome banning them from swearing in public.

When a woman jogger was stabbed to death in Victoria Park, London in 2003 one commentator wrote 'Police were astonished to find at least 30 care in the community hostels, containing more than 400 ill people close to Victoria Park in Hackney where she was murdered. None of these institutions is secure. This is the legacy of one of the great scandals of modern times: the abject failure of care in the community' (Philip Johnstone, Daily Telegraph 10 December 2003). These comments were made before any arrest, and without any evidence that the murder had been committed by one of the '400 care in the community patients'.

The high profile murder cases reported in the media which involved people with a mental health condition often suggest that 'care in the community' is the problem. The facts tell a different story. The proportion of murders committed by people with mental disorders actually went down steadily over the period of de-institutionalisation – from about 35% in 1957 to 11.5% in 1995 according to Home Office figures. Yet the forthcoming Mental Health Bill is widely anticipated to include measures which will allow the authorities to detain people with mental health problems if they are believed to pose a danger to the public. If we subjected other people to such draconian measures in order to prevent risk there would be a major outcry. Mental health service users can be compulsorily detained for a level of risk of violence which, if it were applied to young men who drink alcohol, would mean thousands of young men detained in advance of committing any crime.

And finally...

Emma Stevens, from Blackburn, Lancashire, was turned down by the Cats' Protection League as a potential cat owner on the grounds that, being deaf, she would not be able to hear the cat if it was in distress. A spokesperson for the Cats' Protection League said she was well placed to judge as she had experience of working with deaf children. A deaf

person living alone could not look after a cat – ‘the cat comes first’ (Lancashire Evening Telegraph 24 December 2003).

Last year a Channel ferry operator was alleged to have refused to allow a man with a guide dog to embark because it was concerned the dog would jump overboard. If this risk is real, the suicidal tendencies of guide dogs when near water should be of grave concern to guide dog users worldwide!

Even the ‘risk’ to animals supersedes the rights of disabled people.

A summary of the key points

If disabled people are to become equal citizens, then the damage being done in all areas of life by the issue of ‘risk’ must be challenged.

We must abandon the idea that disabled people are inherently vulnerable and not able, with the right information and support, to manage reasonable risks in their lives. No one is autonomous in their management of risk, and our independence comes from interdependence with others. We all make adjustments in our lives all the time, to manage risk and to balance our aspirations against risks we may choose to take. Care workers can receive effective training in safer lifting – and often disabled people can help the worker lift them in ways that work best. People who are deaf can respond as effectively to alarm systems as anyone else if the alarms include flashing lights rather than only a sound alarm. Public authorities need to think laterally about making simple adjustments like this and to support risk-taking. This is not just because they are required under the Disability Discrimination Act to make adjustments, but because flexibility about taking risks benefits everyone.

The ‘duty of care’ at the heart of our community care legislation needs to be transformed to a duty to support independence and personal responsibility, part of which will mean accepting that life involves taking risks, and public authorities cannot be held accountable for everything that may go wrong.

Disabled people and their organisations should seek out, highlight and oppose risk-averse policy and practice, in particular where this constrains disabled people’s independence and opportunities and where it results in a clear waste of resources. The victory of the Hampstead Pond swimmers should be inspiration to many.

The Health and Safety Executive should continue working with the DRC and disability organisations to actively promote disabled people’s equal right to health and safety, coupled with ensuring a proportionate response to health and safety issues which does not lead to disability discrimination.

A sense of proportion must be adopted about the risk posed by disabled people to others, based on fact, not fear. The media in particular must behave more responsibly in its coverage of mental health stories.

The question of ‘risk’ in all its manifestations is not only stifling disabled people’s opportunities, it’s acting to create a dysfunctional society in which bogeymen lie in wait around every corner, freedom is conceded in order to protect ourselves from imagined dangers, individuals absolve themselves of responsibility for the risks they take, and blame appears to be everywhere.

It's time to take some risks.

Debating points

- Is the balance currently right between protecting disabled people from risks and giving them independence to take risks in their own lives? If not, how should it be changed?
- Who is really being protected by risk management – professionals or disabled people? Please explain the answer you provide to this question.
- Is risk sometimes little more than an excuse for discrimination?
- What examples do you have of this?

Also...

Do you have more examples of what appear to be silly concerns about risk, such as the examples of the napkins or guide dogs jumping from ferries which you can share with us? We'd love to hear from you.

Please email your example to: risk@disabilitydebate.org

Join the debate

We want to make it easy for you to take part, so we are offering a number of ways for you to share your views, comments and ideas.

You can write to us or send a tape concerning your views and comments to:

The Disability Debate
Disability Rights Commission
3rd Floor, Fox Court
London WC1X 8HN

Or email your comments to us at: risk@disabilitydebate.org

You can use this discussion paper to have a discussion in your local area or within your organisation and send or email us a note of the meeting.

You can telephone 0845 333 0303 (local rate number) and leave us a message concerning your views and comments.

You can send your comments via text message to 07797 882 888 (SMS registration number).

Unfortunately, the DRC does not have the resources to send staff out directly to discuss the issues with people in their local area. However, we will be making a special effort to discuss the issues directly with 'hard to reach' groups over the coming months.

We look forward to discussing the issues with you!