

Issue 7

Legal Bulletin

The Disability Discrimination Bill 2005 – new rights for disabled people

Contents

8-12 Trains, Planes and... Roads: The Court of Appeal's first journey around Part 3 of the DDA

13-16 Equal Treatment: Closing the Gap

17-23 DRC Partnerships in Action

24-26 News in brief

After detailed consideration in the House of Lords, the Disability Discrimination Bill was rushed through its remaining Commons stages during the pre-election parliamentary 'wash-up' period. The Bill is intended to complete the Government's implementation of the recommendations of the Disability Rights Task Force which it accepted. The Bill will achieve this by amending the Disability Discrimination Act 1995 (DDA) and it is expected to impact significantly upon disabled people – filling existing gaps in the legislation and taking forward a positive, proactive approach to equality.

The Bill had previously been published in draft form, and was considered by a Joint Parliamentary Scrutiny Committee, to which the DRC had made both written and oral submissions. The Government made a number of changes to its draft Bill prior to introduction, and some further changes have been made by Government amendments in the Lords. This article looks at the main provisions of the Bill and their potential impact upon disabled people.

The meaning of disability

The Bill amends the definition of disability in the DDA so that people with HIV, multiple sclerosis and cancer will in future be covered by the Act from the point of diagnosis. There is, however, a regulation-making power in the Bill enabling the Government to exclude certain cancers from automatically amounting to a disability, the intention being that certain types of cancer which do not require 'substantial' treatment should not be covered. The DRC is urging the Government not to exercise this power as people with relatively minor cancers which require only limited treatment (eg some types of skin cancer) may still face discrimination.

The Bill also removes the requirement for people with mental illness to show that their illness is 'clinically well recognised' in order to meet the definition of disability. This is particularly welcome, as mental health service users have faced the biggest hurdles in enforcing their rights under the DDA because the present definition of disability inadequately reflects the challenges they face.

The duty to promote disability equality

The centrepiece of the Bill is a new statutory duty on public authorities to have due regard to:

- the need to eliminate discrimination and harassment against disabled people
- the need to promote equality of opportunity between disabled and non-disabled people
- the need to take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people
- the need to promote positive attitudes towards disabled people
- the need to encourage participation by disabled people in public life.

The last two points were added during the passage of the Bill by a Government amendment. The duty requires public authorities to examine the way in which they employ people and the way in which

they provide services in order to identify any patterns of systematic discrimination. They must then take proportionate measures to address any problems identified. Rather than adopting a reactive approach to a discrimination claim, authorities will need to consider disability equality issues in the way in which they operate more generally.

There are already many examples of public authorities providing a strong lead on disability equality and making a real difference to disabled people's lives. This new duty should build on and spread those examples. It is a proactive, problem-solving approach that will mainstream disability equality into the core business of the public sector as a whole.

As with the existing race equality provisions, there are two aspects to the new duty. First there is a general duty, applying to all public authorities, and outlined above. There is no list of public authorities to whom the general duty applies. Instead, the Bill uses the Human Rights Act approach in defining public authority as including any person certain of whose functions are functions of a public nature.

As well as the general duty, the Secretary of State (or Scottish Ministers as appropriate) may make regulations to impose specific duties on certain public bodies. The specific duties will be designed to assist key public bodies to meet their general duty, and those bodies will be listed in the regulations, a draft of which has now been published.

Public authorities

Case law relating to the Race Relations Act 1976 has revealed that a number of public functions are unlikely to be covered by the sections of the DDA which deal with the provision of services. These include some local authority and health service functions such as planning, highways and fostering and adoption (in respect of carers) as well as immigration control, the law enforcement aspects of policing, and some aspects of the prison system. The Bill will ensure that these areas are covered by the DDA in future. Disabled people will see

many practical benefits – for example, reasonable adjustments will need to be made in relation to planning applications. The provisions will also cover the appointment of office-holders, such as school governors, who are not already covered by the DDA.

The new provisions should work in a similar way to the existing provisions on access to services – ie it will be unlawful for public authorities to treat a disabled person less favourably than others in the carrying out of a public function. Public authorities will be under an anticipatory duty to make reasonable adjustments to the way they carry out their functions, and this will include providing auxiliary aids and services (such as interpreters or information in accessible formats) and considering removing or changing physical barriers. There are different justifications applicable to public functions, however, such as potentially discriminatory treatment being a proportionate means of achieving a legitimate aim.

Nevertheless, these new provisions on public functions will only come into play in cases where there is no other provision of the DDA which would cover the situation (such as Part 2, the employment provisions, or Part 3, the goods and services provisions).

Councillors

At the moment, those carrying out their duties as councillors are not covered by either the recently-expanded employment and occupation provisions or by the services provisions of the DDA. The Bill remedies this, by making it unlawful for a number of specified authorities (such as county and district councils) to discriminate against members of the authority in relation to, for example, opportunities for training or any other facility for the carrying out of official business. These provisions mean that authorities will also be subject to the duty to make reasonable adjustments – for example, providing committee papers in accessible formats such as on tape or in Braille.

Transport

At present, any service is excluded from the goods, facilities and services provisions of the DDA insofar as it consists of the use of any means of transport (s 19(5)). This is a major flaw in the Act and one which the Bill and regulations made under it will address. The Bill itself removes the existing broad exemption and replaces it with a more precise exemption (relating to provision or the use of a vehicle). The Bill also provides a regulation-making power to enable such services to be brought within the scope of the goods and services sections. The Government has already published draft regulations on bringing taxis, private hire vehicles, private rental or car hire, breakdown vehicles, buses and trains into the scope of the goods and services provisions, and its intention is to do this by December 2006. The reasonable adjustment duties will apply, although there will be no obligations in relation to physical features of vehicles other than in relation (in varying degrees) to car hire and breakdown vehicles. There are also provisions within the Bill relating to the application of the rail vehicle accessibility regulations.

Housing

The existing housing provisions in the DDA provide protection for disabled tenants against basic discrimination by landlords (such as being evicted or refused a tenancy because they are a disabled person). The Bill will now extend the DDA's duties on landlords and management companies to include a duty to make reasonable adjustments to policies, practices and procedures and a duty to provide auxiliary aids and services. This will lead to practical benefits such as changing a 'no dogs' policy to allow assistance dogs, and providing accessible copies of contracts and rent statements. In addition, there is now an all important right for disabled people not to have consent to make reasonable adaptations to physical features of the premises which they occupy (such as installing a handrail) unreasonably withheld by their landlord.

General qualifications bodies

Whilst vocational qualifications bodies have been covered by Part 2 of the DDA since October 2004, those bodies which award more generalised qualifications, such as GCSEs and A levels, have so far had no obligations under the DDA. Following lobbying by the DRC and the recommendations of the Joint Committee, the Government amended the original Bill to ensure that general qualifications bodies are brought within Part 4 of the Act. The provisions applicable to such bodies will, however, mirror those in relation to vocational qualifications bodies in Part 2, with an individualised duty to make adjustments. Given that the DRC has been approached by disabled people whose education – and the ability to take and pass exams – has been inhibited by the behaviour of examination boards which cannot be challenged under the DDA, these provisions are crucial.

Private clubs

At present, private clubs (that is, those private clubs where personal selection mechanisms for membership apply) do not fall within the goods and services provisions of the Act as they are not providing a service to a section of the public. The Bill will extend those provisions to such clubs, covering not only membership and application for such, but also guests and associates. This means that disabled people will have equal rights to membership and equal access to the club's facilities. In addition, clubs will have to make reasonable adjustments to the way in which they deal with membership issues and in relation to facilities provided. The detail of the reasonable adjustment provisions will be contained in regulations which have not yet been published. The Government has stated, however, that it intends the provisions to mirror those in Part 3 (goods and services). It follows that there will be an anticipatory duty to make reasonable adjustments.

Part 3 questionnaires

The Bill will extend the Part 2 questionnaire procedure to Part 3 claims. The questionnaire is extremely important in assisting disabled people to establish the reason for their treatment and often in obtaining information from an employer to determine whether to proceed, or not, with a claim of discrimination. A lack of such a procedure in relation to Part 3 claims has added to the difficulty which disabled people have in bringing Part 3 claims in the county court and this is a very welcome provision.

Other provisions

The Bill also contains provisions regarding:

- disabled persons (parking) badges (relating to the recognition of badges)
- discriminatory advertisements (ensuring that third parties such as newspapers publishing a discriminatory advertisement on behalf of someone else are covered)
- group insurance (making it clear that a person who provides group insurance services to employees of particular employers would be regarded as a provider of services for the purposes of Part 3 of the Act).

Implementation of the new provisions

The new provisions are to be implemented in stages, beginning in December 2005 (when, for example, the extensions to the definition of disability will take effect) and with the final provisions to be implemented in December 2006 (the duty to promote disability equality, for example). The DRC is currently preparing and revising Codes of Practice to reflect the new duties and this year will see the publication of 3 draft Codes of Practice for consultation (a Disability Equality Duty Code – which is already out for consultation; a

Transport Code, dealing specifically with the use of transport vehicles; and a revised Part 3 Code). Details of any of the consultations can be found on our website.

Disabled people have waited many years for this Bill to close some of the most obvious gaps in the DDA, and, by means of the disability equality duty, to ensure that a more positive approach to disability equality is taken. The DRC particularly welcomes responses to its draft Codes of Practice to ensure that the most is made of these new provisions.

Trains, Planes and... Roads: The Court of Appeal's first journey around Part 3 of the DDA

After nearly eight years without any guidance from the Court of Appeal on how the provisions of the DDA relating to goods and services should be interpreted, two cases were heard in the first two weeks of November last year.

Both cases were supported by the DRC, and the resulting judgments set out helpful guidance on the operation of the provisions of Part 3. This article summarises the facts of the two cases and outlines the key findings from each judgment. Coincidentally, both cases concern the accessibility of transport services.

***Roads v Central Trains* [2004] EWCA Civ 1541**

The Court of Appeal heard the case of *Roads v Central Trains* on the 5 November, with the judgment being given the same day.

The case concerned the problems which individuals with mobility impairments face at Thetford railway station, and arose because only one of the two platforms at the station allows direct access to the station concourse and Thetford town centre. To access the other platform passengers have to cross a stepped foot bridge. For passengers unable to use the footbridge the only way to get to the

town centre from the far platform (and vice versa) is by means of a half-mile journey around to the front of the station. This journey consists of a muddy dirt track littered with potholes, a narrow bridge, and unpaved roads.

Mr Roads is a wheelchair-user. He cannot use the footbridge, but neither can he manage the half-mile trek unassisted. Consequently, the case concerned a dispute about how Mr Roads should be able to get to Thetford without getting stranded at the inaccessible platform. Mr Roads argued that he should be able to make an advance booking for an accessible vehicle to transport him between the station concourse and the far platform, the cost being met by Central Trains (which had responsibility for Thetford station at the time) by way of a reasonable adjustment. The alternative put forward by Central Trains was that he should instead travel (at no additional cost) to the nearest accessible station, cross over the track and then get back on a train going the other way in order to arrive at the desired platform at Thetford – a 60-mile round trip which takes up to an hour-and-a-half extra.

Mr Roads succeeded in his argument. The Court of Appeal held that Central Trains was a service provider for the purpose of Part 3 of the DDA. It also accepted Mr Roads's arguments that the separation of platforms at Thetford station amounted to a physical feature which made it impossible or unreasonably difficult for him to make use of the service Central Trains provide. As a result the train company was under a duty to Mr Roads to make reasonable adjustments to enable him to make use of their service.

Here, as is often the case, there were a number of possible adjustments that could have been made to render the service accessible. The judgment of the Court of Appeal helps clarify how to choose between the alternatives. In giving the leading judgment Lord Justice Sedley stated that in situations where there is only one practicable solution, it may have to be treated as reasonable even if it is demeaning or onerous for disabled people. But where this is not the case, the approach taken in the case of *Re Holy Cross, Pershore* [2002] is to be preferred:

'...the policy of the DDA is not a minimalist policy of simply ensuring

that some access is available to the disabled: it is, so far as is reasonably practicable, to approximate the access enjoyed by disabled persons to that enjoyed by the rest of the public.' (Paragraph 30)

This case illustrates that a service provider's duty to make reasonable adjustments is a significant one. In many cases, making a service accessible in some way may not be enough to discharge the duty if there is a more inclusive way of doing this. The service provider should be able to show that the adjustments provided make the service as accessible as is reasonably possible for disabled people.

In this case the provision of a taxi (provided Mr Roads had given notice of his intention to travel) was a reasonable means of enabling him to use the service in a way that was as close as possible to the service provided to other passengers. As Central Trains had conceded that the cost of the taxi was not an issue in the case, by failing to make such an adjustment the company had unlawfully discriminated against Mr Roads. For this he was awarded compensation of £1,097.

Ross v Ryanair and Stansted Airport Ltd [2004] EWCA Civ 1751

The case of *Ross v Ryanair and Stansted Airport Ltd* was heard by the Court of Appeal the week after *Roads*, and judgment was handed down on the 21 December 2004.

Mr Ross has cerebral palsy and arthritis and as a result he is a temporary wheelchair user. He only uses a wheelchair for travelling longer distances – such as those commonly found at airports between check-in and the departure gate.

The case therefore concerned an additional charge of £18 each way which Ryanair made for providing an airport wheelchair every time Mr Ross flew with them from Stansted Airport to Perpignan. The county court found that Ryanair should have provided Mr Ross with an airport wheelchair free of charge as a reasonable adjustment to make their service accessible to him.

On appeal, Ryanair argued that the duty to provide, and pay for, such

assistance should fall instead on Stansted Airport Ltd.

In the event, the Court of Appeal held that Ryanair and Stansted Airport were jointly liable to Mr Ross as they were both service providers in respect of the relevant airside parts of the airport. Both were therefore 100 per cent liable for any unlawful discrimination that occurred under the DDA.

The court rejected Ryanair's argument that the services they provided were solely connected to the use of transport and thus exempt from Part 3 of the DDA. Both this case and that of Roads make it clear that transport infrastructure and those who provide services in connection with it fall within Part 3 even though the actual means of transport (the train or plane) that can be accessed at their facility are currently exempt.

As Ryanair and Stansted were both service providers, the fact that the distance between the check-in and the departure gate (an area over which both had responsibilities) made it unreasonably difficult for disabled people to make use of their services, meant that both were under a duty to make reasonable adjustments. Once Stansted knew that Ryanair were not making any adjustments they should have stepped in to ensure the requirements of the DDA were met.

The court approved the approach taken in the Roads case that the aim of the duty to make reasonable adjustments is to ensure that services are provided to disabled people in a manner that is as close as possible to the services provided to non-disabled people.

The court also confirmed that the ability of a disabled person to pay for the adjustment they require is irrelevant. A wheelchair is an auxiliary aid and, like other auxiliary aids, if it is reasonable for a service provider to provide it, it is under a duty to do so without charge, regardless of the financial resources of the individual disabled person.

Passengers travelling with their own wheelchairs were not subjected to the additional charge levied on those who required the use of an airport wheelchair. It followed that one group of disabled people (temporary wheelchair-users) were being treated less favourably than

another, (permanent wheelchair-users). However, the fact that a service provider may be providing an adjustment for one category of disabled person does not mean that there is no less favourable treatment if the adjustment is not provided to people with other kinds or levels of disability.

While both of these cases were heard by the Court of Appeal after 1 October 2004 (when the provisions of Part 3 relating to physical features of premises came fully into force) the acts of discrimination experienced by Mr Ross and Mr Roads occurred before that date. Had these cases arisen now it is likely that the court would have had to address whether physical changes to the structure of Stansted Airport or Thetford station would have overcome the access difficulties both individuals faced and, if so, whether such changes should have been made. The effects of the new statutory provisions remain untested at present, but the DRC is seeking cases that will test their application.

Equal Treatment: Closing the Gap – A formal investigation into health inequalities experienced by people with learning disabilities or mental health problems

In December 2004 the DRC launched an 18 month general formal investigation (FI) which will look at the physical health inequalities experienced by people with learning disabilities and people of any age with long term mental health problems in England and Wales. The investigation will run until May 2006 and comprises a process of investigation which has been designed to understand barriers and to identify and promote good practice based on workable solutions. The evidence collecting techniques comprise consultation questionnaires, focus groups, in-depth area studies, statistical analysis, and the consideration of evidence by an inquiry panel.

The DRC's powers to undertake formal investigations derive from the Disability Rights Commission Act 1999. Formal investigations can be used to find out whether the DDA is being complied with. They can

also be used to see whether the present law is adequate to protect disabled people from discrimination. An investigation might focus on the activities of a particular organisation or, as here, it might look at the performance of an entire sector.

Health inequalities

There can be no dispute about the fact that there are alarming disparities in the health outcomes of people with mental health problems and people with learning disabilities as compared with the rest of the population. An overwhelming body of medical and academic evidence highlighting these issues forms the bedrock of the FI and an analytical review of this evidence was published by the DRC at the launch of the investigation – this review can be read or downloaded from www.drc-gb.org/health. Put simply, evidence shows that these groups of disabled people have higher mortality rates (ie die earlier) than the overall population – not always for reasons related to their impairment. Some deaths are from potentially preventable illnesses, like respiratory illness. Without good health, people's opportunities to participate in society are reduced and their lives restricted. Some key findings are:

- people with learning disabilities or long-term mental health problems generally have worse physical health than other people
- major reviews of evidence confirm that people with learning disabilities are at a substantially increased risk of early death, with preventable mortality being four times higher than in the general population
- psychiatric drugs can increase the risk of other (physical) health problems.

This evidence will come as no surprise to some, and the DRC investigation will build on important work already undertaken on different aspects of health inequalities by organisations including the Valuing People Support Team, National Institute for Mental Health in England, National Patients Safety Agency, Sainsbury Centre for Mental Health, Joseph Rowntree, Mencap and Mind. The FI also comes at a time when the governments of England and Wales are

marshalling resources behind extensive programmes to reduce health inequalities throughout the general population. Thus far government initiatives and policies have focused on health inequalities due to socio-economic or ethnic background and appear to have overlooked differences in health outcomes contingent on disability.

Our approach to the investigation

The investigation will shine a light both on health inequalities and on potential solutions in order to identify practical approaches to reducing inequality that can be taken forward at a primary care level. It will focus on the individual's journey into and through primary care and conclude with recommendations for national policy and implementation. The investigation is a collaborative project which aims to work with practitioners, policy makers and disabled people. It does not set out to lay blame at anyone's door.

The scope, remit and methodology of the FI were planned throughout 2004 in conjunction with disabled people, disability organisations, practitioners and policy makers. Our work is informed by an FI Reference Group: a broad church including individuals with learning disabilities or mental health problems, and representatives of the DRC's Learning Disability Action Group and Mental Health Action Group, professional organisations such as the RCN, RCGPs, Royal College of Psychiatrists, the Healthcare Commission, Mencap, Mind, Rethink – to name but a few. The FI methodology includes strategies for collecting evidence from people who have more than one impairment (for instance those who have a learning disability and a physical or sensory impairment) and people from black and minority ethnic communities.

The first phase of the FI, which runs until the end of April 2005, is our initial call for evidence from people with learning disabilities, people with mental health problems and primary care practitioners. We would encourage readers with learning disabilities or mental health problems to complete one of our questionnaires – or to encourage anyone they know who falls in to one of these categories to do so. There are also questionnaires for primary care practitioners. In

particular the DRC wants to know about the barriers these disabled people face when accessing primary care and those which practitioners face when treating their physical health care needs. Of equal interest are examples of the good practice measures that already exist (as it is clear that some do) and which are successful in overcoming these barriers.

Further information

For more information about the FI and about completing our questionnaires, please visit www.drc-gb.org/health, email healthfi@drc-gb.org or contact the DRC Helpline. All FI materials are available in alternative formats including Easy Read.

DRC Partnerships in Action

It has often been recognised that the DRC on its own will never be able to enforce the individual rights of ten million disabled people in Great Britain. Add to that the emerging picture on the nascent Commission for Equality and Human Rights, with a growing need for the DRC to build its legacy, and it becomes easy to see why the Commission has now embarked on a major programme of partnership and transfer of expertise work.

The DRC's pilot partnership programme, focused within the boundaries of Yorkshire and Humberside, has received commentary in this bulletin before and, indeed, activity continues apace in the region with our key partners Choices & Rights and ADAAB.

What this article will briefly concentrate on are the key products of work transacted by staff in the Commission's Legal, Casework and Advice and Networks teams, and by our staff in Wales and Scotland.

Know your Rights website area

The Commission has launched a website area for individual disabled

people who are experiencing discrimination in the workplace. The site covers all aspects of discrimination in the workplace, giving clear advice and explanations on topics ranging from the statutory definition of disability to dealing with issues which may arise in the workplace (such as requesting adjustments), completing a DDA questionnaire and bringing a claim to an employment tribunal. Resources in the form of sample letters/questionnaires and employment tribunal documentation are provided for every stage of the process. The materials can be downloaded from the Your Rights section of the DRC's website – www.drc-gb.org.

Adviser's Manual and guides for individuals

A full scale DDA Adviser's Manual has also been published on the web. The manual is a practical guide for caseworkers and advisers considering supporting DDA proceedings under all sections of the DDA. Again, the manual can be viewed and downloaded from our website.

Self-help guides to Part 3 and Part 4 (pre- and post-16 education) of the DDA have also been posted to our website, complementing the already published guide for Part 2. These guides have been specifically written with the individual in mind and it is to be hoped that they will provide useful support material for those seeking to enforce their rights in the employment tribunals, county courts, sheriff courts and education tribunals.

More transfer of expertise materials have been produced for individuals and access groups seeking to challenge service providers under the new physical features provisions of Part 3 of the DDA – sample letters and guidance are available in HTML format.

Very soon, all of these books and guides will be complemented by a Part 3 Trainers' Resource Pack. The pack will be aimed at experienced advisers and trainers and will consist of a sequence of training sessions and associated resources to enable them to deliver training to other, less experienced, advisers. In-depth user testing will be conducted with our key partners in Yorkshire and Humberside.

Training

At the same time as producing written materials, we are also actively providing strategically focused DDA training to national organisations who can cascade the newly acquired knowledge through their branch structures or support units – examples include Citizens Advice Bureaux, ACAS, DRC panel lawyers, the TUC and the Law Centres Federation.

Helpline User Group

The development of national partnerships will require the establishment of a national steering group. Rather than drawing together a new group it has been decided to explore extending the existing DRC Helpline User Group. This group is composed of national organisations that also provide a helpline service and meets to share information and expertise. The existing membership is currently being consulted to gather their views and if a consensus is reached the user group will be expanded. It is proposed to invite key national advice and information providers and national disability and black and minority ethnic organisations to join the group.

The objectives of the group will include furtherance of the DRC's transfer of expertise work; identification of strategic issues relating to the delivery of DDA advice and information services; the provision of 'resource briefings' on the delivery of DDA-related services to national advice and information providers and key disability organisations; identification of the key training needs of member organisations; and promotion of the recommendations made by the DRC's Our Rights, Our Choices, describing how to meet the information and advice rights and requirements of black and minority ethnic disabled people. Roll out of those recommendations continues. Organisations committed to adopting all of the recommendations include DIAL UK, SCOPE, Equalities, NACVS, and the Lesbian and Gay Foundation.

Guidance for funding organisations

The Commission is nearing completion of a toolkit that will support funding organisations – statutory and charitable – that will enable grant aiders to make their application processes fully accessible and, equally importantly, develop funding criteria which actively encourage and promote the development of rights-based advice services to disabled people.

Second tier support and article placement

Commission staff are also providing second tier support to some partner agencies (for example, law centres and the Citizen's Advice Bureaux Specialist Support Unit) and have mentoring and/or co-mentoring arrangements in place with some partner agencies – for example the Disability Law Association.

The DRC's Legal Team is providing an ongoing, rolling programme of specialist cascade training to partner organisations with a high level of legal knowledge and skills. Bespoke training materials are produced for each event. The Legal Team aims to provide of the order of ten such courses per year.

Promotion of the DRC's legal work continues apace with the placement of articles in key professional journals. Many of the articles are likely to be of interest to partner organisations – indeed, some are written for publications produced by partner organisations.

The subject matter of articles produced by the Legal Team includes commentary on technical aspects of the law and recent case law developments, together with practical advice about running DDA cases.

In addition to this, the Commission regularly contributes to publications produced by partner organisations and to other journals read by advisers and lawyers, including the Association of District

Judges Law Bulletin; the Employment Lawyers Association Briefing; the Employment Law Bar Association Bulletin; Hobsons Diversity Manual; the Law Centres Federation Newsletter; The Advisor; BILD; and the Solicitors Journal.

Specialist training

Over the last 12 months the DRC's Legal Team has provided extensive training for external partners. It was necessary to provide additional training to the planned ten events because of the major changes to the employment provisions of the DDA which came into effect in October 2004; the changes to the goods and services provisions of the DDA; and because of recent case law developments. Further training is planned for 2005/6 which will additionally feature coverage of the forthcoming changes to the Part 4 provisions.

Partnerships in Wales

In Wales, the DRC's 'Sharing Knowledge' strategy is being delivered against a backdrop of a plethora of impairment-based self-help groups in Wales but relatively few disability organisations undertaking advocacy and representation work. There is only one law centre and Community Legal Services experience difficulty in awarding contracts. Support and representation from Citizens Advice Bureaux and trade unions is patchy.

Work has been undertaken in three phases – with much of the work being undertaken in conjunction with other Commissions in Wales. The first phase has been concerned with influencing generic advice givers. Training has already been provided to a quarter of Citizens Advice Bureaux advisers and this will be rolled out to the remainder in the first half of 2005. Training has also been delivered to Race Equality Councils.

The second phase has focused on enhancing the quality of

representation. During a Law Society conference, a workshop was held for private practice solicitors. A 'pro bono' employment network scheme will commence this Spring in Cardiff. Three sessions accredited by the Law Society are also planned for later this year in different regions of Wales. A seminar was held in February 2005 on how trade union officers and casework staff from existing Commissions can work effectively together. The DRC has been involved in developing a university course commencing in Autumn 2005 in Cardiff enhancing employment tribunal skills amongst advisers. This may be extended to Bangor.

Thirdly, we have been working with disability organisations in Wales. This has included working to build the confidence of disability organisations in dealing with basic queries on the DDA. Three workshop sessions have been run at DRC roadshows and the Disability Wales conference. A scoping exercise has been undertaken amongst disability organisations in North Wales on their current advocacy work and aspirations.

Partnerships in Scotland

The first year of the DRC's Scotland legal and casework team's transfer of expertise initiative has been challenging, but has resulted in the development of some excellent partnership work.

In Scotland, the DRC has active partnerships with 11 national organisations including Scottish Childminding Association, Jobcentre Plus, Scottish Employment Rights Network and Edinburgh Trade Union Council.

We have also been actively involved in the provision of training and information. Caseworkers attended Freshers Fairs at Edinburgh, Dundee, Aberdeen, Glasgow and Stirling Universities to give advice, and the team has delivered over 40 presentations over the course of the year to audiences ranging from chairmen and members of employment tribunals, to small businesses, HMIE inspectors and the tourism industry.

We are developing a road-show format event to take in- depth

training on Part 3 of the DDA to Citizens Advice Bureaux and other advisers all over Scotland. In developing this training (which we hope to roll out in the summer) we have canvassed over 300 organisations.

Throughout 2004, caseworkers in Scotland provided in-depth second tier advice to advisers, helping them take forward disability discrimination cases. Such assistance has been provided to Citizens Advice Bureaux, advisers in a mental health advocacy organisation, a disabled housing organisation and trade unions, among others.

Learning disability specific partnership work

Members of the DRC's Learning Disability Action Group (LDAG) met with the Valuing People Implementation Team in the summer of 2004. The purpose of the meeting was to explore and map the two organisations' shared agenda, thus providing potential strands of partnership work. For those wishing to know more about the work of LDAG, take a look at www.drc-gb.org/easyread/actiongroup/index.asp and for those wanting to know more about Valuing People and the National Forum of people with a Learning Disability, take a look at www.nationalforum.co.uk/view.asp?id=0 and www.valuingpeople.gov.uk.

LDAG and Valuing People colleagues arrived at the following sequence of priorities, in no particular order:

- with a general election imminent, the rights of learning disabled people to register to vote and take part in the voting process
- improving services offered to people with a learning disability by their local authority – this could capture anything from Direct Payments to Housing
- opening up high street retail financial institutions to people with a learning disability
- getting local Learning Disability Partnership Boards to at least comply with their Race Relations Amendment Act duties and introduce them to the concept of best practice and a disability public sector duty in the process.

All of these priorities are now being progressed in a variety of ways – for instance, the DRC/Valuing People Right to Vote campaign has been launched. Materials can be accessed at www.drc-gb.org/righttovote.

News in brief

Landmark decision strengthening Burden of Proof Regulations

In common with the EOC and CRE, the DRC has welcomed a landmark Court of Appeal decision strengthening the Burden of Proof regulations. The judgment in ***IGEN & Others v Wong [2005]*** makes it clear that if an individual has established that there could be a valid case of discrimination, employers are expected to provide detailed evidence to prove that they did not discriminate. Evidence needs to show that an employer's actions were in no way related to an employee's sex, race, disability, sexual orientation or religion/belief in order to defeat these claims.

The judgment follows concerns expressed by the three equality commissions that the Burden of Proof Regulations (introduced in 2001) were not being implemented consistently or correctly by employment tribunals.

In 2003/4 17 per cent of all cases related to a main complaint of discrimination. The commissions, believing that the majority of these cases would be claims for direct discrimination, intervened to request the Court of Appeal to give clear guidance to employment tribunals on the burden of proof in direct discrimination cases. The resulting judgment should enable parties to settle claims before they are lodged or reach court.

As a result of this judgment, it is now expected that employers will be held liable for unlawful

disability discrimination if they cannot provide a good, innocent, explanation for why they have not recruited or retained a disabled person.

Compensation agreed in Meikle case

The previous edition of this Bulletin included commentary on the case of Meikle v Nottinghamshire County Council following judgment in the Court of Appeal (see Issue 6, page 13). Since then a compensation package has been agreed for Mrs Meikle. The total compensation agreed is in the region of £250,000 and includes Mrs Meikle's full loss of earnings including interest (taking into account the promotions which she would have achieved to date), 75 per cent of her projected future salary, a payment of £20,000 for injury to feelings, together with a lump sum payment into her pension scheme.

DRC enters into agreements in lieu of enforcement

Section 5 of the DRC Act 1999 gives the Commission power to enter into agreements with organisations which it believes to have breached the DDA, as an alternative to other enforcement action – such as formal investigations. We have recently secured two such agreements, each arising out of individual litigation being supported by the DRC. By entering into such agreements the intention is to facilitate the better provision of services to disabled people generally, as well as finding a remedy for the individual and, indeed, providing assistance to the organisations concerned.

Following a complaint by a visually impaired student about the lack of accessible teaching materials, the DRC has entered into an agreement with Bradford University. We will be working with the university in connection with its agreement to carry out an audit of its policies and practices for the provision of teaching materials in an accessible format and the implementation of a disability strategy.

The DRC has been acting for two people with learning disabilities

following alleged discrimination which resulted in them being asked to leave a pub which is owned and managed by Young's Brewery.

In settling the claim against them, the brewery have agreed not only to compensate our clients, but to undertake an access audit for each of its establishments – which number over 200. Any access issues raised will be rectified as part of an ongoing programme of work. The brewery will also put in place a non-discrimination policy for customers setting out the treatment all customers can expect to receive. Staff will be trained on disability issues through the use of an interactive CD-ROM. The DRC will be given feedback on any problems encountered in implementing the agreement and on how such matters have been resolved.

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