



Know your rights
Use your rights
Live your rights!

**An information Resource for Disabled People
and Disabled People's Organisations**

Produced by  Linda Laurie Associates
Changing the World



Disability Wales is the national association of disabled people's organisations striving for the rights, equality and independence of all disabled people.

Please note that the *Know your Rights, Use your Rights, Live your Rights!* information resource is not legal advice. If you need advice, please see the useful contacts section for sources of information and advice. As a policy and influencing organisation Disability Wales is unable to provide legal advice to individuals. The information in this information resource is correct at the time of printing in June 2013. The law may have changed since it was printed, so information in it may be incorrect or out of date.



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1

Introduction

Know your Rights, Use your Rights, Live your Rights! is the overarching theme of DW's three year core programme (2012-2015) which will encompass events, briefings and resources. The aim is to equip members with knowledge and information about disabled people's rights and how they can use them to promote equality and eliminate discrimination and harassment in their community. A further aim is to support and empower disabled people at a particularly challenging time when many are likely to face a reduction in financial support and services in the wake of Welfare Reform and cuts in public spending.

The development of this resource is a key element of the programme. As well as providing information about legislation, it outlines several case studies whereby disabled people and their organisations have successfully argued their rights under the Equality Act (2010), the Public Sector Equality Duties and the UN Convention on the Rights of Persons with Disabilities. The outcome of this has been to influence the planning and delivery of national or local policies or to challenge decisions which threatened to undermine disabled people's equality and independence.

DW recognises how vital it is that disabled people understand their intrinsic human rights and value themselves for who they are. Strengthening disabled people's perception about themselves is an important means of challenging belief systems that they are powerless especially in the face of institutionalised discrimination and individualised harassment.

Our hope therefore is that this resource will act as a source of inspiration and affirmation of what can be achieved when disabled people act together, fully equipped with the tools for change.

When Disability Wales wrote this pack, it decided to concentrate on the rights of Disabled People under various equality laws. These laws are very important and help to make sure that Disabled People can argue for their rights. In a lot of legal cases about the rights of Disabled People however, other laws are used too. These laws are explained elsewhere and are not covered in detail in this pack. They include:

- The Human Rights Act (1998). This Act received Royal Assent on 9 November 1998, and mostly came into force in the UK on 2 October



2000. The purpose of the Human Rights Act is to bring most of the rights contained in the European Convention on Human Rights into UK law. The Human Rights Act does this by placing a duty on all public authorities in the UK to act in a way that respects and fits with the rights in the European Convention. If public authorities fail to respect your rights, you can bring a case against them in the UK courts without having to go to the European Court of Human Rights.

- The National Assistance Act (1948). This was the first piece of law in the UK to make local councils responsible for ensuring that Disabled People get some support. The Act looks mainly at how local authorities should work out what individual Disabled People need and which services a local authority should set up or pay for to support Disabled People. The National Assistance Act is important because it laid the basis for later Community Care Laws.
- The NHS and Community Care Act (1990). This changed the way that local authorities have to assess the needs of Disabled People. The responsibilities of local authorities were widened and rules were set for how assessments of need are supposed to be carried out. All needs assessments by Social Services and Community Care service provision have to be delivered in line with this Act: these include Direct Payments; Personal and Individual Budgets; day care support; respite and residential services. Other laws since the NHS and Community Care Act have set rules for how Social Services are delivered. These include the Community Care (Direct Payments) Act (1996) 'and if passed the Social Services and Well-being (Wales) Bill currently being discussed by the Welsh Government.' All of these are important pieces of law which explain Disabled People's rights to support.
- Mental Capacity Act (2005). This is a law which is designed to support Disabled People who have learning difficulties or mental health labels. It is supposed to make sure that people with learning difficulties and those in the mental health system have rights to make choices and decisions about how and where they live.

You can find links to websites containing more information about all of these laws under the further sources of information section.

2

Know Your Rights

2.1

Equality Act 2010 (EA)

2.1.1

Section 3.1 of the pack is about the Equality Act 2010 (EA). It looks in particular at the parts of the Act which can be used by disabled individuals who want to know more about their rights.

2.1.2

Background to the Equality Act

2.1.3

The EA came into force in October 2010. It replaced other equality laws including the Disability Discrimination Act (DDA) 1995. Some important decisions made by the courts under the DDA can still be used today when making Equality Act claims. The EA strengthened parts of the DDA which were found not to work when tested by real cases in the courts.

2.1.4

The EA covers all employers. This means that any Disabled Person who works for someone else has the right not to be discriminated against while at work under the EA.

2.1.5

The EA covers all providers of goods, facilities and services. The EA also protects Disabled People from discrimination if they are a student: this includes any kind of education such as a nursery, school, college, university or other adult education service. This section of the pack looks mainly at Disabled People's rights under the EA if they are discriminated against by anyone providing goods, facilities or services.



2.1.6

Prohibited Conduct – Unlawful Discrimination

2.1.7

Under the Equality Act a number of new terms were introduced, such as ‘prohibited conduct’. This is a general heading under which all forms of unlawful discrimination fall.

2.1.8

The full list of prohibited conduct in the EA includes:

- Direct discrimination
- Indirect discrimination
- Discrimination arising from disability
- Discrimination by perception
- Discrimination by association
- Disability discrimination: duty to make reasonable adjustments and failure to comply with that duty
- Harassment
- Third-party harassment
- Victimisation
- Gender reassignment discrimination: work absence
- Pregnancy & maternity discrimination

2.1.9

Below, each of the terms relating to disability discrimination is explained.

2.1.10

Another new term introduced by the EA is ‘protected characteristics’. This term defines the different groups of people who are protected from unfair discrimination by the Act. If someone has one or more of these characteristics the Act covers them.

2.1.11

The list of characteristics protected by the EA are:

- Disability
- Gender
- Race

- Age
- Religion or belief
- Sexual orientation
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity

2.1.12

The main purpose of this pack is to help Disabled People's Organisations and their members to understand better how the Equality Act and other disability laws can help Disabled People to defend and extend their rights. It uses examples of issues faced by Disabled People who face discrimination on a number of grounds.

2.1.13

On the next few pages are definitions of unlawful discrimination experienced by Disabled People. These definitions will be used by the courts and are used when public bodies decide how they will run their services.

2.1.14

Direct Discrimination

Direct Discrimination means treating a person worse than someone else because of their protected characteristic (or combination of protected characteristics).

Direct discrimination is saying to someone "you cannot come in" or "you cannot use this service...because you are a Disabled Person". This type of obvious discrimination is rare but does happen. It is easy to spot and easy to challenge. It is not lawful for providers of goods, facilities, services and education to discriminate directly against Disabled People.

2.1.15

Indirect Discrimination

The EA defines Indirect Discrimination as:

"The application of a provision, criterion or practice (without objective

justification) which applies equally to everyone, but which has a disproportionately adverse effect on a person with a protected characteristic (or combination of protected characteristics).”

This means treating everyone the same whatever their needs are. Examples of indirect discrimination include:

- Having a reception counter designed for people who are of typical height and who are standing up
- Only having information available in standard sized print and Standard English

These provisions (a high reception desk and inaccessible information) treat everyone the same but discriminate against people of restricted growth, wheelchair users, visually impaired people, sign language users and people with learning difficulties.

2.1.16

Discrimination Arising From Disability

The EA defines discrimination arising from disability as:

“Treating a person less favorably as a consequence of a characteristic of their impairment or condition (but not directly because of that impairment or condition).”

This means treating someone worse than someone else because of the way they look, sound or act due to their impairment or condition. Such discrimination is against the law unless a service provider can show that it is necessary. Discrimination arising from disability can only be shown to be necessary if a service provider can prove that they need to do it in order for them to be able to deliver some or all of their services.

For example if someone gestures a lot, stutters or has a difference in how they look, these could be called characteristics of their impairments. Inclusion in the EA of ‘discrimination arising from disability’ makes such discrimination against the law. ‘Discrimination arising from disability’ replaces the previous term of ‘disability-related discrimination’ under the DDA.

2.1.17 Discrimination by Perception

Discrimination by perception means treating a person worse than another person because you think they have a particular protected characteristic when really they do not. This form of discrimination covers a number of protected characteristics. People are protected if a service provider assumes that someone is a Disabled Person even if they are not a Disabled Person.

For example, if someone is prevented from using a service or given a worse service because someone thinks they have a particular impairment, that person can still claim disability discrimination under the EA even if they do not have that impairment.

2.1.18 Discrimination by Association

The EA defines discrimination by association as:

“Treating a person less favourably (or applying a provision, criterion or practice which has a disproportionately adverse effect on a person) because they are linked or associated with someone who has a protected characteristic (or combination of protected characteristics).”

This means treating a person worse than someone else because they are connected with someone who has a protected characteristic (or more than one protected characteristic). This form of discrimination covers a number of protected characteristics. Making this kind of discrimination unlawful helps those who are discriminated against because of their links with someone who has a protected characteristic.

For example:

- The mother of a disabled child
- The personal assistant of a disabled adult or
- A friend of a Disabled Person

can claim 'discrimination by association' if they get a worse service because of their link to that person. It is likely that if this happens, the Disabled Person themselves could also claim unlawful discrimination.

2.1.19

Disability Discrimination - Duty to Make Reasonable Adjustments and Failure to Comply with that Duty

2.1.20

This is where a provider of goods, facilities, services or education does not:

- Change the physical features of a building
- Provide an additional piece of equipment such as a Braille menu in a café for blind people or an induction loop at a reception desk for hearing impaired people
- Change the way they deliver a service so that a Disabled Person can use it alongside other people

A provider should understand that it is likely that a Disabled Person may need a change to be made. Providers should have a plan in place which makes sure that Disabled People can use their facilities and services.

If a provider doesn't make a change or removes a change that they made before, a Disabled Person can take a case under the EA because 'failure to make a reasonable adjustment' is 'prohibited conduct'.

2.1.21

A court will decide whether an adjustment is reasonable or whether a failure to make an adjustment is reasonable by deciding whether or not the action taken was a fair and balanced way of achieving a genuine aim. The definition of a reasonable adjustment has changed. Under the DDA, when deciding whether an adjustment was reasonable, a service provider had to think about how hard it would be for a Disabled Person to use that service without that adjustment being made. Under the EA, it is more important for a service provider to think about how much a Disabled Person is disadvantaged by their failure to make a

reasonable adjustment. This may look like a minor change, but it is supposed to make it easier for Disabled People to argue for reasonable adjustments. Under the EA, discrimination can no longer be defended by arguing that an adjustment is unreasonable. A court must now decide whether or not the discrimination against a Disabled Person was a fair and balanced way for the service provider to achieve a genuine aim.

If a court decides that the discrimination was not ‘a proportionate means of achieving a legitimate aim’ (or fair), neither the discrimination nor the failure to make a reasonable adjustment can be ‘justified’ or defended by a service provider. This means that cost can no longer be used on its own to defend a lack of reasonable adjustments.

A service provider who discriminates needs to persuade the court that their discriminatory actions and failure to make a reasonable adjustment were both ‘proportionate’ (fair) and ‘legitimate’ (genuine). If a provider fails to make an adjustment required by a Disabled Person, they should be able to explain this failure on the basis that the adjustment was disproportionate (unfair) and would have prevented them or made it unreasonably hard for them to run their service.

2.1.22 Harassment

2.1.23

The EA defines harassment as:

“Harassment means engaging in unwanted conduct, which has the purpose or effect of violating the other’s dignity, or creating an environment for the other that is hostile, intimidating, degrading, humiliating or offensive.”

This means doing or saying things which are disrespectful and hurtful or offending someone by making them feel small, bullied or threatened. In line with other groups who face discrimination, the EA says that Disabled People who are being bullied, picked-on or abused by a service provider (or their representative) can make claims of disability harassment. This does not apply to a Disabled Person who is

harassed on the street or by a neighbour. Such harassment is unlawful but is dealt with through the criminal courts rather than through the EA, which is civil law.

2.1.24

Third Party Harassment

2.1.25

Third party harassment means repeated harassment of an employee during the course of their work. This harassment is not by their employers, but by people who use the employer's services such as customers. Such conduct can also be described as direct discrimination. Third party harassment is mentioned here because it shows how disabled workers are protected by the EA whilst they are at work, from harassment by customers or others who are not their employers. The EA says that the employer has a duty towards Disabled People and everyone else with a 'protected characteristic' to do all that they reasonably can to protect them from repeated harassment from a third party while they are at work. Repeated or 'persistent' harassment means when three or more occasions of such treatment happen close together. The person who was harassed should keep a note of the dates and times when the harassment happened.

Unwanted and unwelcome behaviour which is:

- Related to an impairment or perceived impairment
- From a third party during the course of employment
- Repeated

is now unlawful.

2.1.26

Victimisation

2.1.27

Victimisation means treating someone worse than before because they have made a claim of discrimination. They can also be victimised if they have been treated badly because they were a witness for someone else who has taken a case of discrimination.

Anyone who helps someone with a protected characteristic with a claim of discrimination is protected from being victimised. For example, this

could happen in a work place where a trade union representative is victimised for supporting a disabled colleague who has been treated unfairly. Victimisation could also happen when someone is receiving or trying to receive a service. A customer, even someone who is not known to the Disabled Person directly, could be victimised for supporting that person in their claim of disability discrimination. For someone to be protected from victimisation their support has to be genuine. If a complaint of discrimination is spiteful it is unlikely that someone who supports such a complaint would be protected against victimisation.

2.1.28

Under the DDA, someone who had been victimised had to name someone who was in the same position as themselves but who had not been treated in the same way. This person was called the 'comparator'. This was to show that the treatment was because of the claim of discrimination they had supported. Under the EA it is now not necessary for a victimised person to name a comparator. It is unlawful to pick on somebody because they have acted as a witness for a Disabled Person or for someone else who has claimed disability discrimination under the EA.

2.1.29

Positive Action

2.1.30

Positive Action is meant to stop past patterns of discrimination and is allowed under the EA. Positive action can be used to provide training or support to people with protected characteristics so that they can compete equally with everyone else for jobs. Positive action means taking positive steps to make sure that people with protected characteristics have certain opportunities which they have not had before because of unfair discrimination. Positive action can be used in service delivery too. It helps to make sure people have equal access to services.

2.1.31

Positive Discrimination

2.1.32

Positive discrimination is better treatment of people because they have one or more of the protected characteristics. It is only lawful under the EA so far as Disabled People are concerned. A service provider can

positively discriminate in favour of a Disabled Person if not doing so would mean them being treated worse than a non-Disabled Person.

2.1.33

The Equality Act (EA) and Disabled People's Organisations (DPOs)

2.1.34

The EA has direct effects on DPOs. The EA applies to any Association of people if:

- It has at least 25 members
- Joining involves following a set of rules
- It is not a trade organisation like a business
- It is not a professional organisation or a trade union

Other parts of the EA cover clubs where you just have to pay a fee and no-one has to decide first whether or not you are allowed to join. A DPO run by a group of friends without any formal structure (such as a book club, a sports group/team or some Access Groups) is unlikely to be an association under the EA. If a DPO has elected officers and people have to follow rules in order to be members, it will probably be treated as an Association under the EA. In this situation all members, associate members or visitors are covered and protected by the EA. This means that the Association must not break the EA in any of its activities.

Associations which are also charities have to accept and keep to special rules for charities included in the EA which are not included in this information pack. The Act permits Associations of any size or type (but not political parties) to restrict their membership to people who share a protected characteristic.

For example, they are allowed to restrict membership to only Disabled People or women. This means that a DPO is allowed to have just Disabled People sitting on its management committee.

A DPO can also discriminate positively by only employing Disabled People in some or all of its jobs. An Association or charity will not break the law by giving benefits only to people who share a particular protected characteristic if doing so is in line with its rules.

Such benefits should either be:

- A fair and balanced way of achieving a genuine aim or
- To stop or make up for a disadvantage which exists because someone has a protected characteristic

Restrictions based on protected characteristics can also be applied to associates and visitors of an Association or charity. For example a women-only group is allowed to restrict attendance so that only women can come to the group: this includes any visitors. This does not apply if the membership of an Association or group of people who are to receive benefits from the charity is defined by skin colour, for example “for Black People only” which is not allowed. If a DPO meets at the house of a member, that member does not have to make adjustments to the physical features of their house. The DPO may have to change the venue for its meetings to make sure that disabled members can use its facilities and services.

2.1.35

■ This section of the pack has looked at and explained:

- The background to the Equality Act (EA)
- Prohibited conduct – which is discrimination that is not allowed under the EA
- Positive action – which describes steps that service providers can take to stop past patterns of discrimination
- Positive discrimination – which is lawful action to discriminate in favour of Disabled People
- The rights and responsibilities of Disabled Peoples Organisations under the Equality Act

2.2

The Public Sector Equality Duty (PSED)

2.2.1

Section 3.2 of the pack is about the Equality Act (EA). It looks in particular at the Public Sector Equality Duty (PSED), which is part of the EA.

2.2.2

Background to PSED

2.2.3

These are rules for public bodies and others carrying out public functions. Public functions are services to the public but not the internal business activity of public bodies. Internal business activity is when one part of a public body needs to talk to other parts of the same body. The Public Sector Equality Duty (PSED) replaces three old Public Sector Equality Duties for disability, race and gender. It covers all nine protected characteristics.

2.2.4

The General Duty

2.2.5

The General Duty is at Section 149 of the Equality Act. It has three aims. It requires public bodies to make sure that they:

- Stop unlawful discrimination, harassment and victimisation
- Work to make opportunities equal for people from different groups
- Encourage good relations between communities

This means that a public body needs to consider the three aims when it makes decisions. Equality issues must be considered when public bodies are deciding how they:

- Act as employers
- Decide how they will run services
- Arrange, organise and review these services
- Buy goods and services from others

The General Duty states that Disabled People's needs are different from those of non-Disabled People. It says that public bodies should take account of Disabled People's impairments or conditions. This could be by making reasonable adjustments. The General Duty means public bodies have to advance or improve Disabled People's equality. Advancing equality of opportunities for Disabled People involves:

- Removing or reducing disadvantages suffered by Disabled People
- Meeting the needs of Disabled People

- Encouraging Disabled People to participate in the wider community and in other activities where their participation is low

2.2.6

The Specific Public Sector Duties for Wales

2.2.7

Section 153 of the EA gives the Welsh Government the right to make laws about what the public sector has to do. These rules started on 6th April 2011 and apply to public bodies in Wales and those which cross the border between Wales and England.

The Specific Public Sector Duties for Wales are stronger than those for the rest of the UK. The duty to ask Disabled People and others with protected characteristics about plans to change public services has been mostly removed from the Specific Public Sector Duties in the rest of the UK. The Welsh Government says that all public bodies must set clear goals to show that they are treating everybody equally. These goals are called Equality Objectives.

Public bodies in Wales have to make sure that the ways in which they run services treat people equally. So they have to carry out equality impact assessments. In Wales this means that there are rules that public bodies have to follow to ask people with protected characteristics what changes are needed to improve their services. These rules do not exist in the rest of the UK.

Public bodies in Wales have to publish a document which shows what they are going to do to improve services for people with protected characteristics. These documents are called Strategic Equality Plans (SEPs).

Public bodies must ask Disabled People and others about how these SEPs should be carried out and report back to the community on the use of these plans. They must look to see if aims have been met and tell people about any aims that have not been met.

Private companies acting for the Government are covered by the Duty – but only their public functions are covered. If a public body pays for

a service from a private company to be delivered on its behalf, it has to supervise and monitor that service to make sure that it keeps to the PSED. For example, NHS Wales asks general practitioners, dentists, pharmacists and voluntary organisations to carry out some of its public functions by providing services to the public in Wales. NHS Wales has a duty to ensure that these organisations keep to the PSED.

2.2.8

■ This section of the pack has looked at and explained:

- The background to the PSED and
- The difference between the General Public Sector Equality Duty and the Specific Public Sector Equality Duties that apply to organisations which are partly or entirely based in Wales.

2.3

United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

2.3.1

Section 3.3 is about the UNCRPD. It looks in particular at what rights Disabled People have under the UNCRPD.

2.3.2

Background to and Definitions Used in the UNCRPD

2.3.3

United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) was agreed by the United Nations (UN) in 2006. The UK made it law in Wales, Scotland, The North of Ireland and England in 2009.

The UNCRPD has two parts. It uses a definition of disability which is closer to the Social Model of Disability adopted by the Disabled People's Movement. 'Impairment' and 'disability' are sometimes used to mean the same things in the UNCRPD.

The definition of disability used in the EA talks about what people ‘cannot do’ because of their impairments. The UNCRPD looks at what needs to change in society for Disabled People to be treated equally.

2.3.4

Part One ‘The Convention’ describes the rights of Disabled People under the UNCRPD. Part Two is the ‘Optional Protocol’ to the Convention. This describes the powers Disabled People have to use the Convention.

2.3.5

The Rights of Disabled People Under the UNCRPD

2.3.6

The UNCRPD contains 17 rights for Disabled People:

- The right to be treated equally (Article 5)
- The right to life, freedom and safety (Articles 10-14)
- The right to be treated fairly, make decisions about your life and independence, with help if necessary (Article 12)
- The right not to be abused (Article 15)
- The right to be protected from violence (Article 16)
- The right to think for yourself and make choices about your life (Article 17)
- The right to travel and decide where you live, including in which country you live (Article 18)
- The right to live independently and in the community and to choose not to live in an institution (Article 19)
- The right to speak out, which is called the freedom of expression (Article 21)
- The right to privacy and to have that privacy respected (Article 22)
- The right to a home and family life and for that to be respected (Article 23)

- The right to receive equal education with non-Disabled People (Article 24)
- The right to access health services on an equal basis with others (Article 25)
- The right to work and the tools, equipment and support you need to do so (Article 27)
- The right to a decent standard of living (Article 28)
- The right to take part in politics, community and public life (Article 29)
- The right to a social life and to access leisure facilities (Article 30)

2.3.7

UNCRPD Rights – Explained

2.3.8

The UNCRPD contains the fullest list of rights for Disabled People in any UK legislation. If a Disabled Person lives in any of the countries which have signed up to the UNCRPD they should be able to rely on using these rights.

The rights in the Convention are mostly covered by the UK's equality and human rights legislation. The UNCRPD also contains a number of rights not listed in other UK laws. The rights of disabled women are in Article 6 of the UNCRPD. The rights of disabled children are in Article 7. The responsibility of government to 'raise awareness' of disability issues is contained in Article 8.

2.3.9

The right to life (mentioned above) is in Article 10. It was included in the UNCRPD to protect Disabled People because some countries are changing their laws about whether Disabled People can be helped to kill themselves if they choose to.

2.3.10

Articles 12, 13 and 15 ban torture of and cruelty to Disabled People. They also make it illegal for courts, the police and prisons to

discriminate against Disabled People. Although all of these rights are parts of other UK laws, they are not written into those laws as clearly as they are written into the UNCRPD.

2.3.11

The right to independent living in the UNCRPD has been accepted by the Welsh Government. In 2012, it published a draft 'Framework for Action on Independent Living'. The Framework has the same ideas and rights as the six priorities in the Manifesto for Independent Living published by Disability Wales in 2010.

2.3.12

The courts and Disabled People find the UNCRPD helpful because it explains clearly how Disabled People's rights under the EA and other laws should be applied and understood. The next section of this document ('Use Your Rights') explains that the UNCRPD cannot be used on its own.

2.3.13

■ This section of the pack has looked at and explained:

- The background to and definitions used under the UNCRPD
- The specific rights of Disabled People under the UNCRPD and what these rights mean for Disabled People.

2.4

Freedom of Information Act (FOI)

2.4.1

Section 3.4 of this pack is about FOI. It looks at how to ask questions under the FOI Act when preparing an argument or case under equality legislation.

2.4.2

Making a Freedom of Information (FOI) request can be a good way of asking for the information you need from a public body in order to

argue your case or make a claim under the Equality Act (EA), the Public Sector Equality Duty (PSED) and/or the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Under the FOI Act anyone has the right to ask any public sector body for the recorded information they have on any subject. There are no restrictions on your age, nationality or where you live. If you ask for information about yourself, your request will be dealt with under the Data Protection Act and not the FOI Act.

Public bodies have to give you general information about how public services are run and delivered if you make a proper FOI request. Public bodies can refuse to answer your questions if doing so would mean that someone else's private information would have to be shared with you. They can refuse to answer your questions if they would have to break the law in order to answer them. FOI requests can show how money has been spent, what a public body has done or what it plans to do.

2.4.3

■ This section of the pack has looked at and explained:

- What the FOI Act is and
- How to ask FOI Act questions

3

Use Your Rights

3.1

The Equality Act (EA)

3.1.1

Section 4.1 is about how to use the law. In particular, it looks at how disabled individuals can use the Equality Act to make a claim about discrimination.

3.1.2

Going to court: advantages and disadvantages.

3.1.3

Taking cases to court or 'litigation' can be a useful way of challenging discrimination and increasing public awareness. Public bodies often choose to cut services for people who they think will not fight back, including Disabled People. DPOs and disabled individuals can use the law to discourage organisations from reducing services to Disabled People. A legal case can still stop cuts even if it is lost.

3.1.4

Legal challenges can make it harder for public bodies to make cuts. Getting publicity about budget decisions and cuts in services can stop or delay these decisions. Publicity can make the public more aware of what is going on and encourage people to take action to stop cuts. Taking legal action can give people time to start a campaign to stop cuts. Campaigns can make it very hard or impossible for cuts to go ahead. Taking legal action against planned cuts can remind people about the impact they may have on Disabled People.

3.1.5

Going to court usually takes a long time. Other ways of challenging decisions can be used at the same time to provide the best chance of success.

3.1.6

Winning a legal challenge can lead to changes in how services are run. It can make a DPO better known and help to increase its number of members.

3.1.7

On the negative side, litigation is often expensive. This is true even if you get Legal Aid to fight the case. There is no guarantee you will win your case. It can take up a lot of your time.

3.1.8

If you take a legal case against a public body this can harm your working relationship with that organisation. It could make it harder for a DPO to work with and persuade a public body to change what it is doing in future. The public body may decide to take funding away if a DPO takes it to court.

3.1.9

There are a number of ways you can use the different laws which cover the rights of Disabled People to be treated equally. Deciding to go to court is usually the last thing to try if other things have not worked.

3.1.10

How Disabled Individuals Can Use the Equality Act (2010)

3.1.11

A Disabled Person can go to the County Court if they want to make a claim against discrimination. If you think an organisation providing goods, facilities or services has discriminated against you or another Disabled Person, going to the County Court is the way to challenge this discrimination.

3.1.12

A County Court can tell the service provider to give you some money because they discriminated against you. The court can also tell the service provider what they must do to make sure that they do not discriminate against you again in future.

3.1.13

If the service provider carries on discriminating against you after the court has told them not to, you can go back to court to make them stop.

3.1.14

If you do not win your case in the County Court you can ask another court to look at the case again. This is called appealing, or making an appeal.

3.1.15

There is a chance that the court will tell you to pay the service provider any money that they have had to spend to answer your claim of discrimination. The court might tell you to pay these costs if you lose your first claim or your appeal.

3.1.16

You may get Legal Aid support if you decide to take a case to the County Court. If you apply for legal aid, there are two tests: a Means Test, to see if you have more than £8,000 in the bank or in the value of anything you own, like a house and a Merits Test, to see how strong your case is and if you are likely to win.

3.1.17

You are allowed to speak for yourself in the County Court and not use a solicitor. If you do this, you will probably have to do a lot of photocopying and organise the papers you will need in court. This will include finding and copying any papers you need to back up your case and writing down what you want to say in court. This is called making a witness statement. The court will also ask you to copy papers it needs to decide your case.

3.1.18

Hearings or cases in the County Court are usually quite relaxed and straightforward. You should bring with you all the documents you need to prove your case and to deal with anything the other side says about your case. You must bring copies of everything you will be using for the judge and the service provider as well.

The service provider may try to make an agreement (or settlement) with you not to go to court. Their solicitor may tell them that they may lose if

the case goes to court. They may not want any bad publicity. This can happen right up to the morning of the hearing. They might be worried that if you win your case they will have to change what they do for other people in the future. They might want to settle with you because it is cheaper than the cost of going to court. The respondent may offer you some money to drop the case because this could be cheaper for them than paying a solicitor to speak for them. If the service provider offers to settle with you, it may not be because they think they have a weak case. You may decide not to use a solicitor, however businesses usually do use one. They may pay for a service or have insurance which covers the cost of their solicitor.

3.1.19

If you do not agree to settle, you can still go ahead with your claim. If you are offered a settlement but decide to go ahead with your case anyway, the court might decide that you should have accepted the settlement if you then lose your case. If this happens, the court can charge you extra money to cover its costs. If you think you will get more from going to court than from a settlement, you may decide to refuse any offer that you get and go ahead with your claim.

3.1.20

It is a good idea to talk to a solicitor about your case, even if you decide to speak for yourself rather than use a solicitor in court.

You should be able to get a couple of hours free advice about your claim even if you cannot find a solicitor to speak for you, free of charge

3.1.21

Different solicitors are good at different things.

You may be better off doing things yourself than asking a solicitor to help you who:

- You do not feel comfortable and confident with
- Does not know about discrimination
- Won't be good at speaking up for you
- Does not know about the Equality Act (EA) or
- Does not know about taking a case to the County Court

3.1.22

If you win your case at the County Court, that may be the end of the matter. The service provider may do what the court tells them and stop discriminating against you. The service provider might appeal against the decision if they think they stand a good chance of winning or if they are worried about having to change what they do so that they do not discriminate anymore. If there is an appeal, either by you or by the service provider, any decision made by the court could be used to help decide other cases in future. If appeal decisions are made public ('reported') they are called 'case law'. If an appeal makes a judgment or decision about an issue that has not been thought about before by a court, the decision is called a 'precedent'. Precedents help courts to understand how to decide cases in future. Only appeal decisions can become 'case law' or 'precedents'. Judgments made in the County Court are not made public and are therefore not 'case law' or 'precedents'.

3.1.23

Precedents add to the law by explaining it and showing how it can be used in real life. If you can find precedent cases by searching on the internet which support your case, you can tell the court about them. Courts do not like to have too many precedents explained to them. If you choose carefully, good precedents can be very helpful in persuading the court that you have a good case.

3.1.24

Judges do not like to be told by an appeal court that they have made the wrong decision. Therefore, they will listen carefully if you argue that your case is like one where there is a precedent decision which supports what you are saying. If you settle with a service provider instead of having a hearing, the settlement you agree cannot be seen as a precedent by any court in the future. Agreements to settle are usually private. Both sides usually agree not to talk or share any details about the settlement with anyone else.

3.1.25

Any claim of discrimination against a pupil by a school is taken to the Special Educational Needs and Disability First-Tier Tribunal system (SENDIST).

3.1.27

If a disabled worker wishes to bring a claim against their employer about discrimination or harassment, they would do this at an Employment

Tribunal. This is another First-Tier Tribunal like the SEN Tribunal. Tribunals, especially at the first level are usually quite informal and straightforward.

If you are not used to tribunals or feel worried about speaking up for yourself at a tribunal, you should look for someone who knows about them who can help you to prepare and say what you want to say.

Usually, the other side at a tribunal such as a school or employer will have somebody to speak for them and help them put their case. Whether or not you and the other side have someone there to help, you will both be asked to speak.

3.1.28

This section of the pack has looked at and explained:

- The advantages and disadvantages of using the law in court and
- How a disabled individual can make a claim of discrimination

3.2

Public Sector Equality Duty (PSED)

3.2.1

Section 3.2 is about what the Public Sector has to do to make sure Disabled People and other people with protected characteristics are treated fairly. In particular, this section of the pack looks at the General and Specific Public Sector Equality Duties (PSEDs).

3.2.2

These clauses of the Equality Act (EA) and decisions made by the Welsh Government about how the law should be understood, show how Disabled People and others must be protected from discrimination by public bodies.

3.2.3

Most importantly, the PSED helps to show public bodies how they can ‘do the right thing’. This is especially true in Wales where the PSED is stronger and more detailed than in the rest of the UK.

3.2.4

Disabled People’s Organisations (DPOs) can help public bodies to decide what changes are most important. A DPO can find out the views of Disabled People about what services need to change. DPOs can also ask Disabled People how any proposed cuts in services would affect them. This information can then be used by DPOs to help public bodies make sure that they do what they are supposed to under the PSED.

3.2.5

A public body draws up Equality Objectives under the PSED. These help public bodies measure how well they are doing in promoting Disabled People’s equality. To draw up these Equality Objectives, public bodies have to decide what the most important things to change are. DPOs can help a public body decide its Equality Objectives by sharing the views of their members about issues like independent living. A DPO needs to make sure that it has an agreed way of telling public bodies in the area about these views. If the public body is doing its job properly, it should take notice of what local Disabled People are saying and make sure that Equality Objectives address the issues raised by them.

3.2.6

Some Disabled People and their organisations have used the PSED successfully to put pressure on their local councillors, Assembly Members (AMs) and Members of Parliament (MPs).

3.2.7

Often, planned changes to the way services are run have been stopped or altered by people who have argued that these changes would mean that Disabled People will not be treated equally. Public bodies have had to change their plans because what they want to do is against the PSED and therefore breaks the law.

3.2.8

If you think what a public body is doing or plans to do is against the PSED, you should try to persuade them that this is the case. Public bodies will usually have complaints and appeals procedures. You should try using all of these to persuade the public body not to discriminate. If you cannot persuade the public body that what it is doing or wants to do is against the PSED, you can ask other people to look into the problem.

3.2.9

You can ask an Ombudsman to look into the problem. Which Ombudsman you ask to do this will depend upon which service is discriminating against you.

In Wales there is one Public Service Ombudsman department which looks at all complaints about public services in Wales, including complaints about local authority services, the Welsh Government and the emergency services.

If you want to complain about a service that is UK-wide, such as Jobcentre Plus, Access to Work or the Courts, complaints can be made to the Parliamentary and Health Service Ombudsman. Instead of going to an Ombudsman, you can ask the Equality and Human Rights Commission (EHRC) to look into the problem for you. The law says that it is the job of the EHRC to do this. The EHRC can tell the public body to change what it is doing if it believes that the public body is doing something that is against the PSED. The EHRC can issue an enforcement notice making the public body keep to the PSED.

3.2.10

You can also ask a solicitor to help you take the public body to court to see if the court thinks what it is doing or plans to do is against the PSED. If you do this, there will need to be one or more disabled individuals who are directly affected by what the public body wants to do. Cases must be taken in the name of individuals. This kind of legal case is called a Judicial Review. To win a Judicial Review, you need to show that what the public body is doing or wants to do has a larger negative affect upon Disabled People than it does on others. Each of these ways of challenging a public body – going to an Ombudsman,

the EHRC, or asking for a Judicial Review – should only be tried if complaining directly to the public body has been unsuccessful. The courts, the EHRC and an Ombudsman will not be willing to look at your case if the public body has not finished looking at it first. If your complaint is urgent, if the public body is taking a very long time or refuses to look at your complaint, you may be able to persuade the Court, the EHRC or the appropriate Ombudsman to investigate.

3.2.11

There have been some cuts in Legal Aid funding for some types of legal cases. When this pack was written, the Legal Aid Agency (LAA) which decides who gets Legal Aid, was still paying for some Judicial Review cases taken by Disabled People against public bodies.

3.2.12

It is not a good idea to ask for a Judicial Review without using a good solicitor who knows about them. The High Court is very formal. It is difficult to understand what is going on if you do not know how it works. The High Court is where Judicial Reviews are heard. It is very rare for anyone apart from a barrister, a judge or a solicitor to be allowed to speak in the High Court.

3.2.13

If you ask for Legal Aid, the LAA will decide how strong it thinks your case is. If it thinks you stand a good chance of winning, the LAA may agree to pay for your solicitor and barrister in a Judicial Review hearing. The same applies to any appeal. If the LAA decides not to pay for your Judicial Review or appeal, you will need to find other funding if you want to go ahead with it. If you lose and do not have legal aid, the court may ask you to pay the costs of the other side which can be very expensive.

3.2.14

A well-funded charity or campaigning body might decide to help you pay for your case, if you can persuade them that the case is an important precedent. This is rare and the charity or campaigning body may want something in return. This might mean you lose some control over the case. You might decide it is better to go ahead even if you have to compromise. You are the only person who should decide this.

3.2.15

If you lose your claim and any appeal in any other court, or you lose in a Second-Tier Tribunal (for example against a cut in benefits or about

discrimination against a school student) you can ask that court for permission to take your case to the Court of Appeal.

3.2.16

■ This section of the pack has looked at and explained:

- How the General and Specific Public Sector Duties work in Wales and
- How to make sure public bodies stay within the law and do what they are supposed to under the PSED

3.3

United Nations Convention on the Rights of Persons With Disabilities (UNCRPD)

3.3.1

Section 3.3 is about the UNCRPD. It looks in particular at the different ways you can use the UNCRPD.

3.3.2

If you want to bring a legal case under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), it will need to be a case under the Human Rights Act or Equality Law. You cannot bring a legal case just using the UNCRPD. You can use the UNCRPD to make your case stronger.

3.3.3

■ **There are lots of ways that you can use the UNCRPD. You can use it for things that go on in your local area. You can also use it to challenge discrimination by government or other national public bodies.**

3.3.4

The different ways you can use the UNCRPD include:

- Situations where the discrimination which has happened is against other UK laws like the Equality Act (EA) or the Human Rights Act (HRA)
- Complaining directly to a public body about what it has done or
- Going to an organisation set up to deal with complaints like the Public Service Ombudsman for Wales or the Care and Social Services Inspectorate Wales (CSSIW)

3.3.5

To make a case using the UNCRPD you should:

- Work out which article or articles in the UNCRPD cover your complaint
- Try to sort things out by pointing out to the public body which articles in the UNCRPD cover the situation
- If that does not work, make an official complaint to the public body, reminding it that it is going against the UNCRPD
- If that does not work, write to your Councillor, Member of Parliament (MP) or Assembly Member (AM) telling them about your complaint
- If none of this changes what the public body is doing, you can go to court and mention the UNCRPD as well as any other law that the public body is breaking

3.3.6

Apart from going to court, you can use articles from the UNCRPD to make sure that public bodies – and private companies running public services for them – keep to the Public Sector Equality Duty (PSED) and the HRA.

3.3.7

The UNCRPD is very useful for individual Disabled People who want to make sure that public bodies do not discriminate against them. This is because the UNCRPD contains clear examples of how Disabled People should be treated by public bodies. This is most important in situations which are not included in other laws like the Human Rights Act for example. The UNCRPD says that Disabled People must be treated equally when using health services. The detail in the UNCRPD about Disabled People's rights to equal treatment by health services are not included in any other law.

3.3.8

If you do not like the way public services are run, you can use the UNCRPD to get public bodies to think again.

You can use the UNCRPD to argue for more Blue-Badge parking spaces. You can use it to complain about staff prejudice or personal discrimination against you. You can also use the UNCRPD if you want to complain about long waiting times for health treatments. If you want to complain about local services being discriminatory, first work out which article or articles of the UNCRPD cover your situation. Tell the public body and the local press why the public service isn't as good as it should be because of what the UNCRPD says. You can also use the internet to make sure other people know about your complaint. This may help you by getting other people to complain as well. When you complain, you should also say what the public body should do so that it does not discriminate or go against the UNCRPD.

3.3.9

It is against the law if a public body cuts services which are essential to Disabled People because this goes against what the UNCRPD says.

3.3.10

If it looks like there are going to be cuts to local public services, do not forget to make this point about the UNCRPD, very strongly.

3.3.11

The UNCRPD can also be used to argue for better public services if services currently do not treat Disabled People fairly. You can ask your local Council to say publicly that it supports the UNCRPD. To do this, you should write to the Council Leader and to the Chief Executive's Department.

3.3.12

If you want to complain about national government or a national public service, you need to make sure that the service has a fair chance to deal with your complaint first. If this does not work, you can ask the UN Disability Committee to look into your complaint. Part Two of the

UNCRPD which is called the Optional Protocol, says that the Committee can look at individual cases. The UN Disability Committee can also look into situations where a lot of people are all saying that the government is doing something which is breaking the UNCRPD.

3.3.13

Any person from a country that has agreed to the Optional Protocol can contact the UN Committee. You can ask the Committee to have a fresh look at the problem. If they agree with you that the public service you are complaining about is breaking the UNCRPD, the Committee can then put pressure on the UK Government or the public body concerned to change what it is doing and stop discriminating.

3.3.14

Governments that have agreed to use the UNCRPD as part of their law, have to give the UN Disability Committee regular updates about what they are doing to make sure that they are keeping to the UNCRPD. These updates are made public on the internet.

<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/SPReports.aspx>

3.3.15

— This section of the pack has looked at and explained:

- How to use the UNCRPD in campaigns and in court
- How to complain to the UN Disability Committee using the UNCRPD

3.4

Freedom of Information Act

3.4.1

Section 3.4 of the pack explains that you can ask public bodies to give you information which will help you argue a case under the Equality Act (EA), The Public Sector Equality Duty (PSED), The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and other laws. Doing this will help make sure that the information you use in campaigns or in court is up-to-date and is about the actual service which is discriminating.

3.4.2

You can ask about how public bodies pay for services and how much money they spend on a service. You can also ask about how a service is run and how a public body has decided which parts of its services are most important.

3.4.3

To ask a public body about these things, you need to make a Freedom of Information (FOI) request. You can do this using email or in a letter. When making a FOI request, you should include:

- Your name
- An address where you can be contacted
- A detailed explanation of the actual information you want

3.4.4

You should be as clear and precise as possible when explaining what information you need. Remember, public bodies can only tell you about services which they themselves provide.

3.4.5

It is sometimes free to make a FOI request. Public bodies will tell you if you have to pay anything for their costs including staff time, postage, photocopying etc.

3.4.6

You should get all the information you have asked for within 4 weeks of making your FOI request. If the public body needs more time to find the information you have asked for, they will contact you and tell you how long it will be before they will answer your FOI request.

3.4.7

You should ask the public body to answer your FOI request in the way which is best for you. If you need your answer to be in Braille, EasyRead, large print or by email, the public body should do this. The Equality Act (EA), the Public Sector Equality Duty (PSED) and The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) all say that public bodies should be ready to write to Disabled People using the format which is best for them. This means that the law says that public bodies in particular have to make sure that they are treating Disabled People equally. This includes making information accessible to Disabled People.

3.4.8

If you want to make a FOI request to a government department, government agency or other public body, you can find their contact details: <https://www.gov.uk/government/organisations>

3.4.9

You could check to see if the organisation you are making a FOI request to has given the information recently because someone else has already asked for it. Public bodies may share this kind of information on their website. You can ask for all the information used to answer your FOI request to be given to you with the names and other private details of individuals taken out. You can ask for the main points to be given to you instead of all the information. How you want to use the information you get will help you to decide how much information you ask for.

3.4.10

If you want to share the information you get from the public body with other people, you need to ask the public body if they will agree to this. This is because the information may belong just to the public body and be covered by copyright.

3.4.11

A public body should not refuse a reasonable request from you to share with other people anything which they have already shared with you. This is because they have given it to you and you are a member of the public.

3.4.12

Public bodies should have information on their websites and at their reception desks about how to make a FOI request to them. Answers to FOI requests can be used to argue your case against discrimination. If the information you get back from a FOI request helps you to prove your point about discrimination, you can use the answer to argue for a change in how services are run so that Disabled People are treated equally in future.

3.4.13

Public bodies have some information which they cannot share. This can be because it is private to individuals, like people's names and addresses. Another example of this kind of information would be details of contracts

that the public body has. Some of these might be private because the public body does not want other people who provide the same services to know what a contract says. This kind of information cannot be obtained by making a FOI request.

3.4.14

If a public body will not give you some or all of the information you have asked for, it has to tell you why.

3.4.15

A public body can say no to your request if they think it will cost them more than £450 (£600 for a Central Government Organisation) to deal with your request. A public body might ask you to say more precisely what information you need. It might do this so that it can answer your questions without spending too much money to work out the answers.

3.4.16

If a public body does not answer your FOI request, you should first contact them and ask them why they have not answered. If you are not happy with the reason the public body gives you, you can complain to the Information Commissioner. To find out more about doing this: <http://www.ico.org.uk/complaints>

3.4.17

Remember, the Data Protection Act and not the FOI Act can be used to find out information about yourself. For example, this is information kept by your employer in its personnel department, your doctor or your bank. The Environmental Information Regulations exist so that people can ask questions about what is going on in the local environment. The Data Protection Act and the Environmental Information Regulations are different to the Freedom of Information Act. Depending on what your request is about, you need to ask questions using the right law.

3.4.18

■ This section of the pack has looked at and explained:

- The rules about how to make a FOI request
- What to do if you are not happy with the answer you get when you make a FOI request

4

Live Your Rights!

4.1.1

We have provided examples in this section. They describe some of the ways that Disabled People, their families or their organisations have used laws about equality and Disabled People to challenge decisions when local authorities tried to cut services or funding. Some of the examples in this section are about private companies, e.g. transport providers and banks, which have not provided access to Disabled People or have treated them in a worse way than non-Disabled People. There are lots of other examples of cases like these, but there is not enough space in this pack to include details about all of them.

4.2

A South Wales group of people with visual impairments versus a South Wales Borough Council [2011]

4.2.1

What was the issue?

A Borough Council in South Wales wanted to introduce car parking charges in council car parks for Disabled People who have Blue Badges. They said that they would only carry out informal consultation about this change, as they said that they did not need to do any other kind of consultation.

4.2.2

What happened?

The Chair of the visual impairment group wrote to the local Assembly Member, listing the reasons why car parking charges for Blue Badge holders should not be introduced:

- Under the 2010 Equality Act councils are required to consult and find out how changes they want to make will effect people with “protected characteristics”

- An Equality Impact Assessment had not been conducted about the proposal
- The Council's duty under the Equality Act 2010 to take forward equality of opportunity by removing or minimising the disadvantages experienced by those who share a 'protected characteristic' (in this case 'Disabled People') were being ignored
- The proposal would make it harder for Disabled People to take part in social activities
- A lot of Disabled People are poor and so struggle to pay the parking charges. There is good evidence about this. For example, the "Disabled Poverty in Wales" report produced by Leonard Cheshire (2011), the EHRC report 'How fair is Wales' (2011) and the DEMOS report "Destination Unknown" (2010)
- Cuts in benefits for Disabled People, for example, DLA changes to PIP, closure of the ILF, etc. will mean that Disabled People are poorer and this will also affect their ability to pay car parking charges
- Public transport remains only partly accessible to Disabled People and despite efforts by the visual impairment group, "there have been no efforts made by bus companies to adapt the service for visually impaired users despite our efforts to engage with them in a proactive and positive way"
- Isolation is a huge problem for people with visual impairment "as mobility is a real issue and transport is a very big challenge." Travelling by car is often the only way that people with visual impairments can get about. The introduction of charges for Blue Badge holders may mean that they have to make fewer journeys

The visual impairment group contacted other disability organisations, including Disability Wales, asking them to support their opposition to the proposed charges.

4.2.3

What was the outcome?

The proposal was dropped but the group thinks that the council may try to introduce the charges again in the future and do a full consultation. If this happens the visual impairment group plans to have a letter-writing and media campaign against the charges.

4.3

An Access Group in North Wales versus its Local Authority [2012]

4.3.1

What was the issue?

Planned changes to the hours when Blue Badge holders could park on a Welsh town's High Street.

4.3.2

What happened?

The town is situated in a valley. Its High Street is a long street with steep side streets around it. Blue Badge holders therefore need to park on the actual High Street. In 2012, the High Street and the area around it were developed. As part of the changes, the local authority reduced the hours when Blue Badge holders and delivery vehicles could park on the High Street from 4.30pm – 11.00am to 4.00pm - 10.00am. This has made it impossible for many Blue Badge holders to visit businesses on the High Street such as banks and hairdressers where appointments may take some time. Blue Badge holders contacted the Access Group when they found out about the changes that the local authority made to the parking hours.

The Group set up an Access Campaign Group of Blue Badge Holders.

The group wrote to the local authority and said that:

- The 2010 Equality Act - Public Sector Equality Duty (PSED) states that public bodies should “consider all individuals when carrying out their day to day work”

- The PSED says that public bodies should have “due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities.”
- The local authority had not done an adequate Equality Impact Assessment (EIA) or consulted with Blue Badge holders about the change
- The authority had not recognised how the change would affect Blue Badge holders.

The group asked the authority to drop its plan about the parking changes. The local authority would not meet with the Campaign Group. The group contacted local councillors to ask for their support.

The Campaign Group sent a Stage One Formal Complaint to the local authority. The local authority wrote back and said that they had undertaken an EIA and a consultation exercise. When the Campaign Group asked to see the EIA [which it had a right to do] the local authority could not give it to the Campaign Group until three weeks later.

4.3.3

What was the outcome?

The group were not satisfied with the EIA. They went to Stage Two of the Formal Complaints Procedure. The authority's said that an “independent” officer who worked for the same authority should be asked to look at the complaint. This officer said that the Campaign Group did not have a valid complaint.

All of the papers and letters from this case have been sent as a Formal Complaint to the Public Services Ombudsman for Wales. The Access Campaign Group are waiting for a decision from the Ombudsman.

4.4

R (JG & MB) versus Lancashire County Council 2011

4.4.1

What were the issues?

1. A rise in the qualifying eligibility Fair Access to Care Services (FACS) Criteria from 'moderate' to 'substantial' for social care services.
2. An increase in charges for home care services.

4.4.2

What happened?

In 2011, Lancashire County Council made a proposal to cut its 2012-13 budget by 26%. Consultation meetings with individuals and providers were organised by the Council.

Disability Equality North West (DENW - a local Disabled People's Organisation) had concerns about the wording of the consultation document and the decision-making process. They got involved to try and make sure that their views were taken into consideration and cuts in independent living services would be as low as possible.

Disability Equality North West had many criticisms of the consultation process about the cuts in services:

- Equality Impact Assessments were not carried out before the consultation process was done
- The EIAs that were carried out had many mistakes
- The EIAs were not rigorous enough. For example, no EIA was done on the original decision to cut funding from Adult Social Care services or the decision to stop funding non-personal care services such as shopping and cleaning
- EIAs did not take into account or accurately reflect the views of individuals and service providers and were not carried out in line with the Disability Equality Duty, Single Equality Act or the United Nations Convention on the Rights of Persons with Disabilities
- Elected members were not given accurate information about the 'alternative services' that Disabled People whose assessed needs were marked as 'moderate' would be told about or 'signposted' to

- Social workers began to carry out reassessments before the final decision about budgets had been made

DENW also said that:

- Some Disabled People that the council planned to 'signpost' to other services may not be able to afford to pay for these services
- Some of those services (including DPOs) may also be experiencing difficulties due to budget cuts and in some cases, may not have the capacity to take on new clients
- 'Signposting' people to these alternative services incurred a safeguarding issue because once local authorities have 'signposted' people to other service providers they do not undertake any checks or maintain any accountability for the individual

In early 2011, DENW was contacted by Disabled People who told them that:

- They had not had a re-assessment of their needs but were being told that their social care support was being cut because the Council could not afford to pay for the services they had been receiving
- They were not being given any paperwork about their assessment
- They were not being told which of the Fair Access to Care Services (FACS) criteria they met
- They were just being contacted by telephone and told that they did not fit any of the criteria for receiving care services

DENW realised that decisions were being made about cuts or changes to services that were based on money and not on people's needs.

DENW discovered that the Council had agreed their new budget eleven days before the consultation about the budget was due to end and that a decision had been made to only fund personal care services. This meant that Disabled People who only had support with shopping and cleaning would have their service cut. Two policies saying this should happen and that charges for home care services

should be increased were passed by the Council without any consultation with Disabled People, their families and supporters, or their organisations.

DENW got a report from the Council in June 2011 showing that the Council had under-spent their 2010-11 budget by £27.1m. The report said that the Council had no plans to put any of this money back into social care services or reverse previous decisions they had made about cuts in services.

DENW wanted to challenge what was happening. It found some people whose services had been cut, who were willing to be named in a legal challenge against the Council's decision. DENW sent a 'letter before action' to the Council. This has to be done before an application for a Judicial Review can be made. Whenever DENW named members who had had their services withdrawn, the Council would contact the Disabled Person and give them a full needs assessment. They would often be given their services back.

4.4.3

What was the outcome?

The application for a Judicial Review was rejected. The Judge said that there was some basis in the complaint that a proper EIA had not been done before the Council agreed its budget. He said the timing of the Council's decisions was "perfectly lawful."

Although the case was lost, DENW says that important precedents were set. The proposed policy when the FACS criteria were tightened, of not paying for shopping or cleaning services was withdrawn, once the case against the Council had begun.

The legal challenge also resulted in the Council withdrawing the original budget document and introducing a weaker one with many concessions to DENW.

This case provides a very helpful summary of the courts' approach to public bodies' equality duties (now the new General Public Sector Equality Duty in section 149 of the Equality Act 2010). It is also a reminder that the courts are reluctant to interfere with difficult social or

economic decisions made by elected officials, as long as there has been proper consideration of the relevant factors, despite other recent cases where such decisions have been overturned.

4.5

Burnip versus Birmingham City Council & Secretary of State for Work & Pensions

Trengrove versus Walsall Metropolitan Council & Secretary of State for Work & Pensions

Gorry versus Wiltshire Council & Secretary of State for Work & Pensions (2011)

4.5.1

What was the issue?

The Local Housing Allowance Regulations which do not permit extra rent to be paid to disabled adults or children who need either an extra bedroom for their personal assistants or who cannot share a bedroom with other family members.

4.5.2

What happened?

These cases were brought by three people and “rolled-up” into one case because they were all about the same issue. Two of the cases were brought by or on behalf of disabled adults who needed twenty-four hour support and therefore an extra bedroom where their personal assistants could stay. One of these people died before the case was heard. The third person was a man who had two disabled children. Both of them needed their own bedroom. All three had been living in privately rented accommodation and claimed Local Housing Allowance (LHA) from their local authorities, which refused to pay rent for the extra bedrooms they needed.

The people who took the cases argued that the LHA rules contravened Article 14 of the 1998 Human Rights Act. When the cases were heard at the Lower Tribunal, they were lost. They were then taken to the Upper Tribunal in 2011, which handles appeals against Lower Tribunal decisions. Once again, the cases were lost.

4.5.3

What was the outcome?

The cases were then taken to the Court of Appeal in 2012. The Court agreed that the housing benefit regulations about the number of rooms that people could get LHA for discriminated against Disabled People because they did not state that a Disabled Person's needs are different to those of a non-Disabled Person. The Court ruled that "without the benefit of the extra room rate, Disabled People would be left in a worse position than an able bodied person living alone". This point arises from their rights under the Equality Act 2010. Winning the cases affirmed their rights under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The UNCRPD was not used in the cases, but lawyers said that it could have been used to resolve any uncertainty in the interpretation of the Human Rights Act if they had needed it.

In 2011 the LHA regulations were changed so that Disabled People who needed an extra bedroom for their personal assistance could get extra LHA. The DWP did plan to appeal the decision of the Court of Appeal about disabled children (the Gorry case). In March 2013 they withdrew the appeal. They also announced that local authorities should allow an extra bedroom for children who are unable to share because of their impairment. (Inside Housing, 13th March 2013). The law has not been changed for Disabled People whose partner may need an extra bedroom.

4.5.4

■ This section of the pack has looked at and explained:

- Real life examples of case studies from the courts and campaigning which use equality law.

This section has given information about some of the legal cases that have used equality legislation to fight against cuts to the benefits and services that Disabled People need to live their daily lives. Some of the examples did not involve Disabled People going to court. These examples show how the laws can be used to make complaints and build campaigns to stop changes.

It is important that Disabled People and their organisations keep track of other challenges to spending cuts, changes in services and changes in government policies. You will find information in newspapers, on TV, radio and on the internet. It is useful to look regularly at the websites of groups such as Disabled People Against Cuts (<http://www.dpac.uk.net/>), Inclusion London's Deaf and Disabled People's Organisations (DDPO) Legal Network (www.inclusionlondon.co.uk) and We Are Spartacus (<http://wearespartacus.org.uk>).

You can also get information from the website of solicitor firms such as Irwin Mitchell Solicitors (www.irwinmitchell.com), Public Law Project (www.publiclawproject.org.uk), Equality Law Reports (www.eqlr.co.uk), Garden Court Chambers (www.gardencourtchambers.co.uk), Doughty Street Chambers (www.doughtystreet.co.uk) and the Equality & Human Rights Commission (www.equalityhumanrights.com).

4.5.5

Using the UNCRPD in complaints

Two other examples of how the UNCRPD could be used with other equality laws by Disabled People when they are fighting to have their needs met can be seen below. The first example is real. The second example is made up to show how the laws can be used.

Example 1

A disabled woman was told by her occupational therapy department that she needed a special ('profile') bed. She was not able to leave her bed and the bed she asked for would have meant her personal assistants could give her bed baths. She requested a double bed so that she could continue to sleep next to her husband. The authority said they would not pay for the bed, even though she offered to pay the difference in cost between a single and double bed. 18 months later the woman was advised by the Disability Law Centre to tell her local authority that under the UNCRPD Article 23 (the right to respect for private and family life) they should pay for the bed.

Three hours later the authority found enough money to buy the whole of her double 'profile' bed.

(Source: Disability Now, June 2006, page 14).

Example 2

P has been receiving home-care from her local authority. She has very high support needs. She asks for her needs to be assessed again as she feels she needs more help. Her local authority agrees that her needs have increased. The only way they can meet those needs, they say, is if she moves into a residential care home. They say that their budget is under pressure and that it would be too expensive for them to pay for home support. P feels strongly that she wants to stay in her own home. She is very active in her local community and has lots of friends and interests. P can use the UNCRPD and other laws to argue that the local authority should support her to live at home.

P can argue that:

- Article 8 of the European Convention on Human Rights places a duty on her local authority to respect her right to private and family life. This right includes being able to have friends and take part in social and cultural activities and leisure. When people go into residential care they can be cut off from friends and left out of activities they would normally be involved in if they lived at home. This right is also about protecting a person's mental and physical well-being. P is certain that she would become depressed if she was uprooted and deprived of her independence.
- Article 19 of the UNCRPD says very clearly that P has the right to choose where she lives and who she lives with. It says she has the right to live in the community and the right not to be forced into any particular kind of living arrangement such as a residential care home. This will strengthen her case.
- Under the Public Sector Equality Duty her local authority also has a duty to promote equality of opportunity for Disabled People. That duty should be used when decisions about individuals are being made. Moving P to a care home would remove her opportunities to take part in all the things she does at the moment. She can remind them of this and ask them whether they have done an Equality Impact Assessment (EIA). She can ask them to share the findings of any EIA with her. If they haven't done one, she can ask them to involve her when they do the EIA.

(Source: www.equalityhumanrights.com/legal-and-policy/enforcement)

4.5.6

■ This section of the pack has looked at and explained:

- Ongoing legal case studies
- Legal case studies which have finished
- Case studies about situations which haven't gone to court
- How to use the UNCRPD in complaints

Further sources of information

Equality Advisory Support Service

The Equality Advisory Support Service provide information, advice and support on discrimination and human rights issues to individuals in England, Scotland and Wales, including advice on what the Equality Act 2010 says and how this applies to Disabled People.

FREEPOST

Equality Advisory Support Service
FPN4431

Phone: 0808 800 0082

Textphone: 0808 800 0084

If you are Deaf or hard of hearing, you can call RAD through their webcam portal at <http://www.royaldeaf.org.uk/webcam/> to speak to an adviser in British Sign Language or text chat.

www.equalityadvisoryservice.com

They also run a government funded helpline that has replaced the Equality and Human Rights Commission (EHRC) Helpline:

Phone: 0800 444 205

Textphone: 0800 444 206

Equality and Human Rights Commission

Guidance for service users about their rights under the Equality Act 2010.

<http://www.equalityhumanrights.com/advice-and-guidance/service-users-guidance/>

FREEPOST

Equality Advisory Support Service
FPN4431

Phone: 0808 800 0082

Textphone: 0808 800 0084

The EHRC also produces a guide to The United Nations Convention on the Rights of People with Disabilities, which can be read online:

<http://www.equalityhumanrights.com/human-rights/human-rights->



practical-guidance/guidance-from-the-commission/a-guide-to-the-un-disability-convention/

Cardiff Law Centre

Cardiff Law Centre offer fortnightly "drop-in" advice sessions on Wednesdays between 6-8 p.m. The centre is run by LawWorks; a charity which aims to provide free legal help to individuals and community groups who cannot afford to pay for it and who are unable to access legal aid.

Cardiff Law Centre
41-42 Clifton Street
Cardiff
CF24 1LS
Phone: 0292 0498117
Email: cardiff.lawcentre@dial.pipex.com

Citizens Advice Wales

The Citizens Advice Wales site includes guides and FAQs including ones that deal with disability discrimination, as well as contact details for local branches of Citizens Advice Bureau:

<http://www.adviceguide.org.uk/wales.html>

Phone: 08444 77 20 20

Disability Advice Project

A project covering South-East Wales which provides information and advice on all disability issues through to Upper-Tier Representation.

Phone: 01633 485865
E-mail: pjones.dap@gmail.com

Diverse Cymru

Provides benefits advice, equality training, social care advice, BME mental health support, Disability Access advice. Current services include direct payments, self directed and independent living support, befriending and advocacy. Advice service covers South Wales. Office hours are 9 a.m. to 5 p.m., Monday to Friday. They operate a maximum case load which from time to time may result in a waiting list for services.

Diverse Cymru
3rd Floor, Alexandra House
307-315 Cowbridge Road East
Cardiff
CF5 1JD

Phone: 0292 0368888
E-mail: info@diversesecymru.org.uk
www.diversesecymru.org.uk

Charity Commission

Regulates and advises charities in England and Wales. Their website contains information about how the Equality Act applies to charities.

Phone: 0845 300 0218
Textphone: 0845 300 0219

http://www.charity-commission.gov.uk/about_us/about_the_commission/equality.aspx

Department for Work and Pensions

The DWP site has a section which covers the duties of the UK Government under The United Nations Convention on the Rights of People with Disabilities, as well as further information about the convention:

<http://odi.DWP.gov.uk/disabled-people-and-legislation/un-convention-on-the-rights-of-disabled-people.php>

It also has a very large contact list which is too long to include here, but can be found by visiting:

<http://www.DWP.gov.uk/contact-us/contact-a-z/>

Disabled/Deaf People's Organisations Legal Network

The DDPOs Legal Network aims to bring together DDPOs and lawyers to work together raising understanding of the legal system, legislation, case law and policy that relates to the quality of life, rights and inclusion of Deaf and Disabled People. The Network will create a forum for disseminating legal information of strategic importance.

<http://www.publiclawproject.org.uk/ddposlegalnetwork.html>

Disability Law Service

Run by and for Disabled People. DLS is a registered national charity.

Disability Law Service
39-45 Cavell Street
London
E1 2BP

Phone: 020 7791 9800
Minicom: 020 7791 9801
E-mail: advice@dls.org.uk
www.dls.org.uk

Their website includes a large range of downloadable factsheets covering Disabled People's rights under the Equality Act:

http://www.dls.org.uk/advice/factsheet/factsheets_download.html

Disability Rights UK

Disability Rights UK publish guides to disability rights, including the "Disability Rights Handbook" which can be purchased via their website.

12 City Forum
250 City Road
London
EC1V 8AF

Phone: 020 7250 3222
Email: enquiries@disabilityrightsuk.org
<http://www.disabilityrightsuk.org/publications.htm>

Legislation.gov.uk

This government website includes extensive explanatory notes about all aspects of the Equality Act, including examples of how the different sections of the act apply.

Printed copies of legislation and other publications can be purchased from The Stationery Office whose contact details are below.

The Stationery Office Limited
PO Box 29
Norwich
NR3 1GN

Premium Rate Telephone: 0870 600 5522

Premium Rate Fax: 0870 600 5533

Email: book.orders@tso.co.uk

<http://www.legislation.gov.uk/ukpga/2010/15/notes/contents>

The British Institute of Human Rights

The British Institute of Human Rights (BIHR) is an independent human rights charity that is committed to challenging inequality and social justice in everyday life in the UK.

<http://www.bihar.org.uk/>

BIHR have produced a guide for disabled people called 'Your Human Rights' <http://www.bihar.org.uk/documents/guides/a-guide-for-disabled-people>

There is also a guide available for those living with mental health issues providing practical information about human rights and their relevance to mental health http://www.bihar.org.uk/downloads/guide/bihar_mental-health_guide.pdf

Linda Laurie Associates

Linda Laurie Associates (LLA) was commissioned by Disability Wales to write this pack. LLA is run entirely by Disabled People. It is a consultancy which works throughout Wales, Scotland and England. The consultancy has two senior partners and fifteen other consultants in Wales and England. It sells a range of training and consultancy services designed to help Disabled People's Organisations and public sector bodies make sure that they are aware of and comply with equality, employment, community care and health laws.

www.llassociates.co.uk

admin@llassociates.co.uk
1 Portland Court.
Sheffield.
S6 3EW
Phone: 0114 225 8676

RNIB

The RNIB has various guides on the Equality Act and how it affects Disabled People, including Frequently Asked Questions:

<http://www.rnib.org.uk/livingwithsightloss/yourrights/equalityact/Pages/equalityact.aspx>

RNIB Cymru contact details and information can be found here:

<http://www.rnib.org.uk/aboutus/contactdetails/cymru/Pages/cymru.aspx>

RNIB Headquarters
105 Judd Street
London
WC1H 9NE
Phone: 0303 123 9999
Email: helpline@rnib.org.uk

Benefits and Work

An internet resource and forum providing practical, detailed and accurate information about disability and incapacity benefits written solely with the interests of claimants and their advisers in mind.

<http://www.benefitsandwork.co.uk/>

We Are Spartacus

A website and forum for Disabled People's views on welfare reform. Contains a newsfeed and information resource containing useful links and reports. *Note:* This site is not set up to deal with individual benefits enquiries.

<http://wearespartacus.org.uk/>

<http://www.spartacusforum.org.uk/>

Human Rights Act 1998

This law can be used to bring a case against a public authority if you feel your human rights have been violated. This link contains more information about this Act.

<http://www.equalityhumanrights.com/human-rights/what-are-human-rights/the-human-rights-act/>

Mental Capacity Act (2005)

This piece of law can be used alongside equality legislation to argue for the rights of Disabled People. This link contains more information and a brief description of the Act.

http://www.alzheimers.org.uk/site/scripts/documents_info.php?documentID=354

National Assistance Act 1948

This piece of law can be used alongside equality legislation to argue for the rights of Disabled People. This link contains more information and a brief description of the Act.

<http://www.mjsol.co.uk/library/statutes/national-assistance-act-1948/>

NHS and Community Care Act 1990

This piece of law can be used alongside equality legislation to argue for the rights of Disabled People. This link contains more information and a brief description of the Act.

http://www.devon.gov.uk/community_care_legal_duties_info_sheet2_mby_additions_carers.pdf

Thank you

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Formats

This guide is available in English and Welsh and Easy Read. If you would like this guide in another format please contact Disability Wales.

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Use your rights
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