

Implementation of the United Nations Convention on the Rights of Persons with Disabilities in England and Wales

Shadow report

Disability Rights UK and Disability Wales

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1. Introduction

This report provides an independent assessment of implementation of the United Nations Convention on the Rights of persons with disabilities in England and Wales.

Its production has been led by Disability Rights UK¹ and Disability Wales² with support from Neil Crowther³ and the assistance of a Steering Group.⁴

To compile the report there was extensive engagement with disabled people in England and Wales including:

- Inviting evidence by email including relevant reports;
- Asking disabled people to complete an online survey asking qualitative questions about what issues they thought should be highlighted (487 people responded).
- Holding 10 focus events (London, Manchester, Leeds, Newcastle, Plymouth, Southampton, Birmingham, Cardiff, Wrexham, Llanelli) outlining the UNCRPD and asking what issues should be highlighted (attended by 235 disabled people).
- Attending meetings of specific groups including CHANGE (Learning Disabled People) and Deep (the UK network of Dementia Voices).

The report has been produced with the kind support of the Equality and Human Rights Commission.

The report is structured around the articles in the Convention. Some areas of policy and legislation concerning England and

¹ Disability Rights UK is a membership organization led by disabled people primarily working in England <http://www.disabilityrightsuk.org>

² Disability Wales is a membership organization of disabled people's organisations across Wales and is led by disabled people <http://www.disabilitywales.org/about-us/>

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Wales remain the sole responsibility of the UK government, whereas others have been devolved to the Welsh Government. We have sought, where relevant, to provide evidence and to propose recommendations that are specific to the Welsh Government in addition to those concerning the responsibilities of the UK government in relation to England or to both England and Wales. The scope of devolution to Wales is explained in the Annex (page 58).

Note on terminology

Throughout we used the term 'disabled people' rather than the term 'persons with disabilities' as employed by the UNCRPD. This respects the theory, principles and terminology agreed by the UK disabled people's movement. This term does not however conflict with the definition of disability employed by the UNCRPD. Similarly, we use 'learning disabilities' rather than 'intellectual disabilities.'

2. Implementation of the Convention on the Rights of Disabled people in England and Wales

2.1. Article 4 – General Obligations

Failure to have due regard to the Convention in policy making

In its 2012 inquiry report into implementation of the right to independent living, the Joint Parliamentary Committee on Human Rights concluded that ‘Inadequate attention has been paid to the impact of relevant policy on the implementation of the UNCRPD, in contravention of Article 4(1) and 4(3).⁵ There remains little evidence that government is consistently taking account of the CRPD in developing policy and making decisions. In some cases, such as in the development of the Care Act 2014 the provisions of the CRPD were explicitly rejected.⁶

Failure to ensure that all public authorities and institutions act in conformity with the Convention

In England and Wales, power to take many of the most significant decisions determining whether or not disabled people enjoy their human rights, such as in relation to health, social care and public transport increasingly resides with regional, local and other national bodies. The UK Initial Report does not provide information about the measures taken to ensure that such bodies recognise and implement the rights in the Convention.

The introduction of laws and policies that are inconsistent with the Convention and which have led to retrogression

As the Committee is aware, since the CRPD was ratified by the UK in 2009 there has been a dramatic programme of reform and public spending decisions that individually and cumulatively have

⁵ Implementation of the Right of Disabled People to Independent Living - Twenty-third Report of Session 2010–12 (March 2012) Joint Parliamentary Committee on Human Rights

⁶ See para 4.6 of Adult Social Care (May 2011) Law Commission report http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc326_adult_social_care.pdf

severely impeded the rights of disabled people. In some policy areas, practices are being encouraged or go unchallenged which are at odds with the principles and intention of the CRPD, such as rising numbers of children attending special schools.⁷

Disabled people not involved in the development of law and policy or in decision making in a consistent way

When the UK Government submitted its initial report on the CRPD in 2011 it referred to several ways that it was involving disabled people in monitoring implementation of the Convention, including via the 'Network of Networks' and 'Equality 2025'. These mechanisms no longer exist and whilst a Fulfilling Potential Forum has been established, it is unclear whether the replacements replicate the extent and depth of involvement envisaged by the UNCRPD – particularly in relation to monitoring progress in implementing the Convention. For example, in October 2016 the Government announced that it would be withdrawing financial support for the National Forum of People with Learning Disabilities.⁸

Recommendations

We recommend that the Committee calls upon the UK and Welsh Governments to:

- Act on the recommendation of the Joint Parliamentary Committee on Human Rights which in 2012 proposed that: 'the Government make a clear and unequivocal commitment to Parliament, equivalent to that which it has already given in relation to the UN Convention on the Rights of the Child, that they will give due consideration to the articles in the UN Disabilities Convention when making new policy and

⁷ See under Article 24

⁸ See: <http://nationalforums.co.uk/shared/shared-news/important-news-about-our-future-funding>

legislation, and in doing so will always consider relevant recommendations of the UN treaty monitoring bodies.⁹

- Conduct a systematic assessment of compliance with the CRPD, involving disabled people, and set out areas for action.
- Develop and implement protocols for the active involvement of disabled people, including at national and local level and across public and political life.

2.2. Article 5 – Equality and non-discrimination

Equality before and under the law

The UK has yet to ratify Protocol 12 of the European Convention on Human Rights which provides a freestanding right to non-discrimination before the law.¹⁰

Prohibition of discrimination

The full potential of the Equality Act 2010 has been undermined by poor implementation¹¹ and by the government characterising it as a regulatory burden on business and public bodies.¹²

Provision of reasonable accommodation

The government has yet to commence provisions in the Equality Act 2010 relating to reasonable adjustments in common parts of

⁹ Implementation of the Right of Disabled People to Independent Living - Twenty-third Report of Session 2010–12 (March 2012) Joint Parliamentary Committee on Human Rights Para 110

¹⁰ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/177>

¹¹ Key problems identified by a 2016 House of Lords Inquiry include: Cuts of over 75% to the budget of the Equality and Human Rights Commission since 2010; Refusal by Ministers to lay draft Codes of Practice before Parliament so denying their statutory status and force; The introduction of fees to bring claims to employment tribunals which has seen a 54% decline in disability discrimination claims since 2013 See: The Equality Act 2010: impact on disabled people <http://www.publications.parliament.uk/pa/ld201516/ldselect/lddeqact/117/11702.htm>

¹² See for example: Equalities Red Tape Challenge <https://www.gov.uk/government/speeches/equalities-red-tape-challenge-and-reform-of-the-equality-and-human-rights-commission-outcome>; David Cameron calls time on 'Labour's Equality Impact Assessments' <http://www.bbc.co.uk/news/uk-politics-20400747>; The Review of the Public Sector Equality Duty https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/237194/Review_of_the_Public_Sector_Equality_Duty_by_the_Independent_Steering_Group.pdf

buildings.¹³ The House of Lords Select Committee on the impact of the Equality Act on disabled people (2016) expressed its frustration with this ongoing delay, but the government responded that the matter would be the object of further review.¹⁴

Schools are not under a statutory duty to make reasonable adjustments in relation to physical features.¹⁵ This exemption is non-compliant with the requirements of Article 5 (3) of the CRPD.

Measures to accelerate or achieve de facto equality

Section 149 of the Equality Act 2010 places duties on public bodies to have due regard to the need to eliminate discrimination, advance equality and promote good relations (the 'Public Sector Equality Duty'). As a 'duty of process' rather than outcome, public bodies can make no progress towards the aims of the general duty and be judged by courts to be in compliance. In its inquiry into the impact of the Equality Act on disabled people, the House of Lords recommended that:

‘a new subsection should be added to section 149: “To comply with the duties in this section, a public authority in the exercise of its functions, or a person within subsection (2) in the exercise of its public functions, shall take all proportionate steps towards the

¹³ The Equality Act 2010 Part 4 S6 <http://www.legislation.gov.uk/ukpga/2010/15/section/36>

¹⁴ Government response to the House of Lords Select Committee report on the Impact of the Equality Act 2010 on disabled people, response to recommendation 20 (p16) <https://www.parliament.uk/documents/lords-committees/equality-act/Govt-Response-to-HoL-SC-Report-on-the-EA2010.pdf>

¹⁵ In 2003 the government imposed a 'planning duty' on schools and local authorities aimed at 'improving the physical environments of schools for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and benefits, facilities or services provided or offered by the schools.' Although subject to inspection by the schools inspectorates for England and Wales, the duty is not enforceable and remedy is not available to parents and guardians of disabled children. (Equality Act Schedule 10 <http://www.legislation.gov.uk/ukpga/2010/15/schedule/10>)

achievement of the matters mentioned in subsection (1).^{16,17}

Involvement of disabled people

Whereas in Wales public authorities are required by law to involve disabled persons in the steps they take to meet the Public Sector Equality Duty¹⁸, public authorities in England are not.¹⁹ The duty to involve included in the predecessor Disability Equality Duty had provided a central vehicle for government to ensure compliance with pre-ambular 15, Articles 4(3) and 33 (3) of the CRPD.

Recommendations

We recommend that the Committee calls upon the UK Government to:

- Ratify Protocol 12 of the European Convention on Human Rights.
- Lay before Parliament the draft Statutory Codes of Practice concerning schools, further and higher education and in relation to the Public Sector Equality Duty.
- Implement Part 4 s36 of the Equality Act 2010 relating to common parts of buildings without further delay.
- Remove the exemption of schools from the duty to make reasonable adjustment to physical features.

¹⁶ House of Lords Select Committee (2016) The Equality Act 2010: impact on disabled people paras 332-336

<http://www.publications.parliament.uk/pa/ld201516/ldselect/ldseqact/117/11702.htm>

¹⁷ In response the government said that 'it was considering a further review of the Public Sector Equality Duty and that it would ensure that the Select Committee's concerns and recommendations are taken into account in any such review.' Government Response to the House of Lords Select Committee Report on The Equality Act 2010: The impact on disabled people (rec 31, p24)

¹⁸ See: <https://www.equalityhumanrights.com/en/advice-and-guidance/guides-psed-wales>

¹⁹ See: <https://www.equalityhumanrights.com/en/publication-download/engagement-and-equality-duty>

- Amend the public sector equality duty in line with the recommendation of the House of Lords Select Committee to focus compliance on outcomes rather than process.
- Amend the specific duties of the Public Sector Equality Duty as they apply in England to make explicit a duty to engage and involve disabled people, in line with the specific duties in Wales.

2.3. Article 6 – Women with disabilities

Disabled women in England and Wales experience multiple forms of discrimination and disadvantage, which are referenced throughout this report.

To these ends, the Equality Act 2010 included provisions to prohibit ‘combined discrimination’ related to ‘dual characteristics.’²⁰ However, the government announced on 15 May 2012 that it would be delaying implementation of this provision and has not since indicated if or when it might be introduced.²¹

Recommendation

We recommend that the Committee calls upon the UK Government to:

- Implement section 14 of the Equality Act 2010 concerning dual discrimination.

2.4. Article 7 – Children with disabilities

The rights of children with disabilities are addressed through this report. However, we note that the UN Committee on the Rights of the Child (the UNCRC) has voiced its concern that in the UK there is no comprehensive national strategy for the inclusion of disabled children.

²⁰ S14 Equality Act 2010

²¹ Equalities red tape challenge and reform of the Equality and Human Rights Commission: outcome <https://www.gov.uk/government/speeches/equalities-red-tape-challenge-and-reform-of-the-equality-and-human-rights-commission-outcome>

Recommendation

We recommend that the Committee supports the CRC's call on the UK to:

- 'adopt a human rights-based approach to disability, set up a comprehensive strategy for the inclusion of children with disabilities.'²²

2.5. Article 8 – Awareness raising

Broadly, research suggests that there is strong receptiveness to the rights of disabled people in Britain, coupled with recognition of the prejudice that disabled people face.^{23,24} However, a series of research projects commissioned by the disability charity Scope showed that prejudice towards disabled people is commonplace.²⁵ Disabled people experience other people's attitudes as a barrier to

²² Committee on the Rights of the Child Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland called upon the UK to:

“adopt a human rights-based approach to disability, set up a comprehensive strategy for the inclusion of children with disabilities”²²

(a) Ensure full respect of the rights of children with disabilities to express their views and to have their views given due weight in all decision-making that affects them, including on access to and choice of personal support and education;

(b) Set up comprehensive measures to further develop inclusive education, ensure that inclusive education is given priority over the placement of children in specialized institutions and classes and make mainstream schools fully accessible to children with disabilities;

(c) Provide children with disabilities with a comprehensive and integrated package of services for transition to adulthood, from a sufficiently early stage, by coordinating legislation, policy and programmes across relevant sectors, and ensure fully informed decisions by children with disabilities on their personal choice in the transition, by involving them in the design of services and by providing advice and information on available options.’

²³ Prejudice and unlawful behaviour - Exploring levers for change (2016), Abrahams, D et al Equality and Human Rights Commission

²⁴ Opinium (2013) research: 2,081 online interviews with nationally representative sample of UK adults aged 18+, conducted between 11 – 19 September 2013.

²⁵ Disabled people are thought of as less productive and as objects of care. Many people express discomfort at the idea of talking to a disabled person: Current attitudes to disabled people (2014) Scope

<http://www.scope.org.uk/Scope/media/Images/Publication%20Directory/Current-attitudes-towards-disabled-people.pdf?ext=.pdf>

full participation.²⁶ There are estimated to be around 54,000 incidents of disability hate crime in England and Wales each year.

Altogether, two in five (43%) people don't personally know anyone who they believe to be disabled.²⁷ A survey carried out by Mumsnet and Scope found that four in ten (38%) parents said that their disabled children 'rarely' or 'never' have the opportunity to socialise and mix with children who aren't disabled.²⁸

Tackling attitudes, prejudice and stereotype

Section 149 (5) of the Equality Act 2010 places duties on public bodies to have due regard to the need to tackle prejudice and promote understanding in order to 'foster good relations between persons who share a relevant protected characteristic and persons who do not share it'.²⁹ However, there is little evidence of this duty leading to specific action by public bodies in respect of attitudes to disabled people.

The UK government has taken some action, such as convening broadcasters to promote positive coverage of disability and following the 2012 Paralympic Games working with Channel 4 and other broadcasters. It also supports 'Time to Change' – a major campaign to tackle mental health stigma.

The rights of disabled people are not however addressed as a mandatory element of the school curriculum. Full inclusion in society in itself promotes changed attitudes, but progress has been slow. Government policy and supported programmes to foster

²⁶ OPM and Ipsos MORI (2014) Removing barriers, raising living standards, Report for Scope. The research consisted of in-depth qualitative research, conducted by OPM, including 10 focus groups and 30 one-to-one interviews with disabled people with a range of impairments and/or health conditions; and quantitative survey research, conducted by Ipsos MORI, including an online survey of 1,674 disabled people and a face-to-face survey with 371 disabled people, which combined to give a representative sample of disabled people across the UK. In addition, OPM conducted ten interviews with disability experts, change experts and members of the coproduction group.

²⁷ Current attitudes to disabled people (2014) Scope
<http://www.scope.org.uk/Scope/media/Images/Publication%20Directory/Current-attitudes-towards-disabled-people.pdf?ext=.pdf>

²⁸ Scope analysis of Mumsnet / Scope survey of 550 parents of disabled children in England and Wales, conducted between 24 January – 7 February 2014.

²⁹ <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

social integration do not routinely promote the integration of disabled children and adults.

Recommendations

We recommend that the Committee calls upon the UK and Welsh Government to:

- Match commitments to supporting anti-stigma campaigning in mental health with a commitment to initiatives with clear outcomes to tackle discriminatory attitudes and behavior in relation to disabled people more broadly. This should be rooted in evidence and developed with disabled people.

2.6. Article 9 – Accessibility & Article 21 Access to information

Inadequate supply of accessible housing

There is a significant shortfall in the availability and supply of accessible housing and no legal or regulatory mechanism to guarantee the increased supply of accessible housing in England and Wales.³⁰

Barriers to access in the wider environment

Barriers to access to the wider built environment persist, despite measures included in anti-discrimination law, building regulations, planning law and guidance.³¹ Research, guidance and regulation has not kept pace with the lived experience of barriers by some groups include people with mental health problems, people with learning disabilities, people with dementia or other neuro-diverse

³⁰ Research jointly published by Habinteg Housing and the Papworth Trust in August 2016 concludes that at least 1 in 6 households that need accessible homes do not currently have all the accessibility features they need – equating to 300,000 households The Hidden Housing Market – A new perspective on the market case for accessible homes (2016) Habinteg Housing and Papworth Trust <http://www.habinteg.org.uk/hidden-housing-market>

³¹ ODI (2011) 'Accessibility outside the home: Key facts from the Life Opportunities Survey interim results 2009/10'; Adapt NI with BMKent Consulting found that the most common barriers disabled adults experience when accessing buildings are: stairs; doors or narrow corridors; inadequate lifts or escalators; parking problems; lack of ramps/handrails; footpath design and surfaces; difficulty with transport getting to the building; lack of help or assistance.

conditions. Following its inquiry into the impact of the Equality Act 2010 on disabled people, the House of Lords Select Committee concluded that ‘in planning services and buildings, despite the fact that for twenty years the law has required anticipatory reasonable adjustment, the needs of disabled people still tend to be an afterthought.’³²

Manufactured goods

Disabled people experience extensive barriers in using manufactured goods, yet they are presently beyond the scope of equality law in England and Wales.³³ To these ends, on 2 December 2015 the European Commission published its proposal for a draft Directive on the accessibility requirements for products and services. However, following the EU Referendum of 23 June 2016, the UK is now on course to leave the European Union, including potentially the Single Market, and hence it is unclear whether the proposed Directive will apply in the UK or be emulated by the UK government.

Shared space

Shared space refers to a street design, becoming more commonplace in the UK, that integrates vehicles and pedestrians together, by removing crossings, kerbs and traffic signs. It poses particular dangers to disabled people, especially to people who are blind or partially sighted, by providing no delineation between pavement and road. A report ‘Accidents by Design’ found that 35% of participants reported that they deliberately avoided using shared space schemes, suggesting that many disabled and older people

³² House of Lords Select Committee (2016) The Equality Act 2010: impact on disabled people www.publications.parliament.uk/pa/ld201516/ldselect/ldseqact/117/117.pdf

³³ As the House of Lords Select Committee Inquiry noted: ‘There is powerful evidence of the serious impact of barriers to everyday living faced by disabled people as a consequence of the inaccessibility of vital products such as digital television, radio and ‘white goods’ because they are not often designed with the needs of disabled people in mind.’

feel physically excluded from using public shared space schemes.³⁴

Public transport

Despite many measures to improve the accessibility of public transport, many disabled people continue to experience significant barriers when travelling.³⁵ Outdated vehicles and infrastructure in many parts of the country fail to incorporate access measures, both physical and in terms of audiovisual technology and human assistance, and new infrastructure is not always consistently accessible.³⁶ A House of Lords Committee heard allegations that a series of deadlines requiring bus operators to replace all non-accessibility-compliant vehicles was not being strictly enforced.

Provision of accessible information by public bodies

Since 31 July 2016, all organisations that provide National Health Service care or adult social care have been legally required to follow the Accessible Information Standard.³⁷ The standard is not however replicated across public services and despite requirements contained in the Equality Act 2010 there is a paucity of accessible information in relation to critical services such as courts and tribunals. The *All Wales Standards for Communication and information for people with sensory loss* and the recent statement on BSL recognises the communication needs of Deaf people accessing public services but does not give adequate recognition to the linguistic rights of Deaf people.

³⁴ Accidents by Design: The Holmes Report on “shared space” in the United Kingdom - Lord Holmes of Richmond MBE July 2015 <http://chrisholmes.co.uk/wp-content/uploads/2015/07/Holmes-Report-on-Shared-Space-.pdf>

³⁵ ODI (2011) Life Opportunities Survey

³⁶ For example, original plans for Crossrail did not include step-free access at all stations along the route (para 276 House of Lords Committee report on the impact of the Equality Act on disabled people http://www.publications.parliament.uk/pa/ld201516/ldselect/ldseqact/117/11710.htm#_idTextAnchor117)

³⁷ The standard aims to make sure that people who have a disability, impairment or sensory loss are provided with information that they can easily read or understand with support so they can communicate effectively with health and social care services. <https://www.england.nhs.uk/ourwork/accessibleinfo/>

Recommendations

We recommend that the Committee calls upon the UK and Welsh Governments to:

- Develop measures, including policy commitments, to increase the supply and availability of accessible housing.
- Redouble efforts to ensure the promotion and enforcement of accessibility law, regulations and standards, through use of levers including government procurement, resourcing of enforcement and embedding accessibility in inspection regimes in health, education etc.
- Ensure that the provisions of the EU Accessibility Act are mirrored in domestic legislation.
- Remind local authorities of their obligations under the Equality Act 2010 to have due regard to equality between disabled and non-disabled people and the duty on public bodies in Wales to consult with disabled people in the context of planning and street design.
- Ensure that all new public transport infrastructure meets the highest standards of accessibility and universal design, including the strict enforcement of deadlines to replace non-compliant vehicles.
- Consider rolling the accessible information standard out across public services.

We recommend that the Committee call on Welsh Government to:

- Progress development and implementation of an Accessible Transport Framework and Action Plan for Wales, at least equivalent to plans developed or being developed in Scotland and England.

2.7. Article 10 – Right to life

Unexpected deaths of persons with mental health conditions and/or intellectual disabilities

Among persons with mental health conditions, there has been a steep rise in the number of unexpected deaths of in-patients or those cared for at home during 2014-15.³⁸ The number of those killing themselves or trying to do so has also increased.³⁹

Equivalent data is not available with respect to persons with intellectual disabilities because it is not routinely collected. Data provided to the Guardian newspaper in response to a series of Freedom of Information requests revealed that hospitals in England have investigated just 222 out of 1,638 deaths of patients with learning disabilities since 2011. Among deaths they classed as unexpected, hospitals inquired into just over a third.⁴⁰

Unlike deaths in police, prison or immigration detention or following contact with state agents – where the coroner’s inquest is based on the independent investigation of the Independent Police Complaints Commission (IPCC) or the Prisons and Probation Ombudsman (PPO) – no such equivalent investigative mechanism exists to scrutinise deaths in mental health settings or in the context of care for persons with learning disabilities. Instead, the inquest is reliant pre-inquest on the internal reviews and investigations conducted by the same trust responsible for the patient’s care. There is no centralised, accessible database of Coroners’ verdicts and any narratives attached rendering it impossible to track repeated verdicts involved the same NHS Trust organisation. In its report ‘Monitoring the Mental Health Act 2015’

³⁸ An increase of 21% from 2012-13. Figures for the first six months of 2015-16 show a continued upward trend, with 1,132 serious incidents recorded as involving an unexpected or potentially avoidable death. Figures provided by NHS England in response to a Freedom of Information request by Norman Lamb MP

³⁹ By 26% from 595 in 2012-13 to 751 in 2014-15. – Figures provided by NHS England in response to a Freedom of Information request by Norman Lamb MP

⁴⁰ Revealed: NHS hospitals investigate one in seven deaths of vulnerable patients, 26 April 2016, Guardian Newspaper <https://www.theguardian.com/society/2015/dec/20/revealed-nhs-hospitals-investigate-1-in-7-deaths-of-vulnerable-patients>

the Care Quality Commission expressed concern about the efficacy of this system.⁴¹

Recommendations

We recommend that the Committee calls upon the UK and Welsh Governments to:

- Institute new, fully independent and mandatory systems for investigating deaths of persons with mental health conditions or intellectual disabilities in the care of the State.
- Introduce an agreed, coherent set of published statistics which includes all information necessary to provide an overview of the number and features of the deaths of persons with mental health problems or learning disabilities in the care of State or State-funded facilities. This information would include characteristics such as age, gender, ethnicity and location of death; and type of death, e.g. self-inflicted, restraint-related, neglect or from “natural causes”.

2.8. Article 12 – Equal recognition before the law

The Mental Capacity Act 2005 (MCA) is not compliant with the CRPD, principally because it permits legal capacity to be denied on the dual basis of mental incapacity and disability.⁴²

The MCA also relies on a ‘best interests’ standard that fails to comply with the safeguards required by CRPD Article 12.4.⁴³

⁴¹ “We are particularly concerned that providers are failing to notify us of the death of a detained patient in the expected timescales in nearly half (45%) of all cases... We are concerned by the lack of an independent system for investigating the deaths of detained patients in healthcare settings, and believe there is much greater opportunity for learning to take place when deaths occur, and for improvements to be put in place.” Monitoring the Mental Health Act 2015 (2014/15) Care Quality Commission

https://www.cqc.org.uk/sites/default/files/20151207_mhareport2014-15_full.pdf

⁴² In the MCA an inability to make a decision is referred to as ‘mental incapacity’ and is defined functionally, as the inability to understand, retain, use or weigh, and communicate the information relevant to the decision.⁴² S2(1) MCA stipulates that:

“For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter *because of an impairment of, or a disturbance in the functioning of, the mind or brain*”

⁴³ As the Essex Autonomy Project has identified the best interests standard in S4 of the MCA requires only that: “the wishes and feelings, beliefs and values of a person be *considered*, not

The support model under the MCA is support for *mental* not *legal* capacity; accordingly support is not construed as helping a person to exercise legal capacity in accordance with their will and preferences, but to attain the standard of mental capacity to be *permitted* to exercise legal capacity. Neither is support necessarily based on a person's will and preferences,⁴⁴ and there is at present no mechanism under the MCA to enable a person to nominate a legally recognized supporter⁴⁵ – although the Law Commission has recently proposed that such a mechanism should be created.⁴⁶ Thus the resulting support available is limited, fragmented and not in accordance with the spirit of the CRPD.

In addition to the discriminatory grounds on which legal capacity can be denied, official evidence suggests that the processes by which capacity is determined fail to meet existing legal requirements.⁴⁷

Recommendations

We recommend that the Committee calls upon the UK Government to:

- With the full involvement of disabled people, develop options for reform or replacement of the Mental Capacity Act to ensure that new legislation complies with the UNCRPD. As a minimum revised or new legislation should:

that they be *given priority* in any decisions taken in the best interests of the person” However, the Law Commission has proposed a presumption that best interests decisions that would follow the wishes of the individual unless there are good reasons not to do so in its report *Mental capacity and deprivation of liberty: A consultation paper*, (Consultation Paper 222) London.

⁴⁴ Series, L. (2015) 'Relationships, autonomy and legal capacity: Mental capacity and support paradigms', *International Journal of Law and Psychiatry*, 40, 80-91.

⁴⁵ Individuals who are deemed to have the mental capacity to do so may make a Lasting Power of Attorney, but their role goes beyond that of a supporter to acting in the individual's best interests. This is not available to individuals considered to lack the mental capacity to make a Lasting Power of Attorney.

⁴⁶ Law Commission (2015) *Mental capacity and deprivation of liberty: A consultation paper*, (Consultation Paper 222) London.

⁴⁷ See: House of Lords Select Committee on the Mental Capacity Act 2005 (2014) *Mental Capacity Act 2005: post-legislative scrutiny*, (Report of Session 2013–14) TSO: London

- De-link any test of capacity from a ‘diagnostic threshold’ related to disability.
- Ensure that safeguards prioritise respect for the will and preferences of the person.
- Adopt explicit positive obligations to ensure support for the exercise of legal capacity (including both supported decision making and measures to extend legal agency).
- Consider with disabled people how best to judge will and preferences in cases where a person’s expressed wishes are unclear, fluctuating or in conflict with previously made binding instruments such as advance directives.

2.9. Article 13 - Access to Justice

Cuts to legal aid and legal advice

The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 removed numerous areas of law from the scope of civil legal aid, including employment cases (with the exception of discrimination) and most housing, debt and social security benefit cases. Disabled people relied more on legal aid services and are likely to be disproportionately affected by the reforms.⁴⁸

State support for local and national not-for-profit advice agencies relied on by many disabled people when seeking advice about their rights or help to challenge decisions have also faced

⁴⁸ House of Commons Justice Committee (2011) Inquiry Report on ‘Government’s proposed reform of legal aid: Third Report of Session 2010-11’ Vol 1, p32.

significant cuts.⁴⁹ ‘Fragility and patchiness of advice and information services generally’ is an issue in Wales.⁵⁰

Redress against discrimination in employment

The government introduced fees for bringing claims in employment tribunals by the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013⁵¹ which came into force on 29 July 2013.

The introduction of fees has proven a major barrier to securing remedy in relation to employment discrimination. Since their introduction in July 2013, disability discrimination claims have fallen by 54%.⁵²

Recommendations

We recommend that the Committee calls upon the UK Government to:

- Act on the strong evidence that tribunal fees are unfairly obstructing discrimination claims under the Equality Act in the context of its ongoing review of tribunal fees.
- Explain how the impact on disabled people of the reform to legal aid and reduction in grants to advice agencies in England and Wales is being monitored and the steps being taken to address any negative effect.

We recommend that the Committee calls upon the Welsh

⁴⁹ The Low Commission (January 2014) found that: ‘reductions in local authority funding of advice and legal support (are) estimated to be at least £40m by 2015’; Shelter has had to close nine of its advice centres as a result of a £3m cut in its legal aid funding ;ASA have had their grant from the (then) LSC cut, reducing their ability to perform a co-ordinating and representative role www.lowcommission.org.uk/dyn/1389221772932/Low-Commission-Report-FINAL-VERSION.pdf

⁵⁰ Framework for Action on Independent Living 2013 Welsh Government

The Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 (SI 2013/1893)

⁵¹ The Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 (SI 2013/1893)

⁵² See House of Commons Library, *Employment Tribunal Fees*, 22 June 2016. See also Chapter 12, *The Implications and Consequences of UK Exit from the EU: Social Policies*, Aileen McColgan, ‘Britain Alone!’, P Birkenshaw & A Biondi (Eds), 2016, pages 215 – 220.

Government to:

- Address the lack of specialist advice services on legal rights for disabled people in Wales.

2.10. Article 14 - Liberty and security of the person

The Mental Health Act 1983 and Mental Capacity Act 2005 are not compliant with the UNCRPD. The Law Commission for England and Wales has noted advice by the UN High Commissioner on Human Rights that to comply with the CRPD, legal grounds for detention must be “de-linked from the disability and neutrally defined so as to apply to all persons on an equal basis” and has concluded that:

‘it is difficult to see that the Mental Capacity Act (or indeed all mental health and capacity law in the United Kingdom) is remotely compliant (with the CRPD).’^{53,54}

However, it is also very difficult to see how any signatory to the European Convention on Human Rights could implement disability neutral detention legislation relating to risk, dangerousness, incapacity or other grounds because it is necessary to comply with one of the limited categories of Article 5(1) permitting detention.^{55,56}

⁵³ Mental Capacity and Deprivation of Liberty Consultation (2015) :Law Commission http://www.lawcom.gov.uk/wp-content/uploads/2015/07/cp222_mental_capacity.pdf

⁵⁴ The Mental Capacity Act 2005 is non-compliant for the reasons outlined in relation to Article 12. The Mental Health Act 1983 is non-compliant, principally because it permits compulsory detention and compulsory treatment on grounds that include disability (‘mental disorder’). People with ‘mental disorders’ are exceptional amongst citizens in that they can be compulsorily detained on the basis of a perception that they may be a risk to themselves or others in the future; and in that they can be compulsorily treated even when they are entirely capable of taking decisions themselves. There is no actuarial basis for decisions on risk of future harm and no option to challenge in legally the way risk is applied to the individual. Legislation permitting compulsory treatment became more draconian with the passage in 2008 of a law introducing Supervised Community Treatment Orders (CTOs).

⁵⁵ See: Bartlett, P. (2012) ‘A mental disorder of a kind or degree warranting confinement: examining justifications for psychiatric detention’, *The International Journal of Human Rights*, 16(6), 831-844; Fennell, P. and Khaliq, U. (2011) ‘Conflicting or complementary obligations? The UN Disability Rights Convention, the European Convention on Human Rights and English law’, *European Human Rights Law Review*, (6), 662-674.]

⁵⁶ The UK Government has asked the Law Commission to undertake a review of the Deprivation of Liberty Safeguards. The Commission has consulted on proposals and is

The number of uses of compulsory detention and treatment under the Mental Health Act 1983 has increased significantly, particularly over the last decade.⁵⁷ In addition, Community Treatment Orders (CTOs) were used 4,564 times in 2014-15.⁵⁸ When CTOs were introduced in 2008 by the last Labour Government, the intention was that they would be used 400-600 times per year, with a corresponding reduction in compulsory detentions in hospital. The reality has been starkly different: CTO rates about 10 times the rates predicted, and compulsory detentions in hospitals continuing to rise. Three randomised controlled trials have shown no patient benefits of CTOs.⁵⁹ Despite this there has been no review.

Compulsory admission rates for people of black ethnicity are almost three times greater than those of white patients.⁶⁰

expected to bring forward draft legislation in December 2016. However, while striving to articulate proposals in support of the aim and principles of the CRPD, the Commission has said that it will not attempt to address fundamental features of the law that cause it to be in non-compliance with the CRPD:

‘All appropriate efforts have been made to give effect to the will and preference of the person, and in places we have provisionally proposed amendments to the Mental Capacity Act in order to achieve this. However, aspirations such as the complete removal of substituted decision-making and of differentiation in law attributable to mental disability would require a greater process of change over a much longer timescale. They would also require policy decisions and resources from Government. These are matters beyond our powers. In the meantime, our new scheme aims to support the principles of the UN Disability Convention, whilst creating an appropriate balance with the existing regime of the Mental Capacity Act and ensuring compatibility with the European Convention on Human Rights.’

⁵⁷ In England, powers of compulsory detention were used 21,897 times in 1987-8; 44,093 in 2007-8; and 58,399 in 2014-15. A 10% rise between 2013-14 and 2014-15 was the fastest on record Health and Social Care Information Centre
<http://content.digital.nhs.uk/catalogue/PUB18803/inp-det-m-h-a-1983-sup-com-eng-14-15-rep.pdf>

⁵⁸ Health and Social Care Information Centre
<http://content.digital.nhs.uk/catalogue/PUB18803/inp-det-m-h-a-1983-sup-com-eng-14-15-rep.pdf>

⁵⁹ They state: “*The evidence is now strong that the use of CTOs does not confer patient benefits despite substantial curtailment of individual freedoms ... and their current high usage should be urgently reviewed.*” (Burns et al, 2013).

⁶⁰ Monitoring the Mental Health Act 2014/15 Care Quality Commission
http://www.cqc.org.uk/sites/default/files/20151207_mhareport2014-15_full.pdf

The 2015 Learning Disability census showed that 83% of inpatients with learning disabilities were subject to detention under the Mental Health Act.⁶¹

During 2015-16 local authorities in England received 195,840 applications to authorise a deprivation of liberty and there were 206,010 individuals who were the subject of at least one active Deprivation of Liberty Safeguards application under the Mental Capacity Act 2005. Over half of these related to people with dementia, and a significant minority to adults with learning disabilities.⁶²

Following an expose in 2012 by the BBC's Panorama programme of the inhuman and degrading treatment of people with learning disabilities in long stay hospitals, including 'Assessment and Treatment Units' the UK government promised 'a dramatic reduction in hospital placements for this group of people and the closure of large hospitals.'⁶³ However, while there has been some progress, the last Learning Disability Census in 2015 found that almost half of inpatients (1,450 or 48 per cent) with learning disabilities in specialist inpatient units on 30 September 2015 were also receiving inpatient care at the time of previous census collections dating back to 2013.⁶⁴

Recommendations

We recommend that the Committee calls upon the UK Government to:

- Carry out an urgent review of Community Treatment Orders.
- With the full involvement of disabled people, develop options for reform or replacement of both the Mental Health Act and

⁶¹ The Learning Disability Census considers inpatients in specialist units with learning disabilities, autistic spectrum disorder and/or behaviour that challenges. It provides detailed information about these patients and their experiences of care in NHS and independent facilities in England⁶. The Census began in 2013 in response to events at Winterbourne View Hospital⁷.

⁶² Source: <http://content.digital.nhs.uk/catalogue/PUB21814>

⁶³ Transforming care – a national response to Winterbourne View Hospital (2012) Department of Health <https://www.gov.uk/government/publications/winterbourne-view-hospital-department-of-health-review-and-response>

⁶⁴ Learning Disability Census 2015

the Mental Capacity Act to ensure that new legislation complies with the UNCRPD. As a minimum revised or new legislation should:

- De-link any permission of compulsory detention or treatment from a ‘diagnostic threshold’ related to disability. This will require consideration of how at the same time to maintain compliance with the European Convention on Human Rights.
- Ensure that safeguards prioritise respect for the will and preferences of the person.
- Continue to invest in the development of community-based alternatives to support people with learning disabilities, autism, mental health problems or dementia.

Recommendations

We recommend that the Committee calls upon the UK Government to:

- Carry out an urgent review of Community Treatment Orders.
- With the full involvement of disabled people, develop options for reform or replacement of both the Mental Health Act and the Mental Capacity Act to ensure that new legislation complies with the UNCRPD. As a minimum revised or new legislation should:
 - De-link any permission of compulsory detention or treatment from a ‘diagnostic threshold’ related to disability. This will require consideration of how at the same time to maintain compliance with the European Convention on Human Rights.
 - Ensure that safeguards prioritise respect for the will and preferences of the person.

2.11. Article 15 – freedom from torture, inhuman and degrading treatment or punishment & Article 17 – protecting the integrity of the person

Use of restraint and seclusion

The use of restraint and seclusion in mental health and learning disability care is commonplace.⁶⁵ In June 2016, the Committee on the Rights of the Child expressed concern at the use of restraint and seclusion on children with psychosocial disabilities including autism in schools in the UK.⁶⁶

There are examples of health services in the UK that aim to be free of restraint and seclusion – for instance, in Nottingham every use of seclusion is viewed as a clinical failure. However, while the Department for Health has produced advice,⁶⁷ the UK has no national commitment to move towards a restraint and seclusion-free service, unlike some countries such as the USA.

Inappropriate use of anti-psychotic drugs and other medication

Evidence demonstrates that anti-psychotic and anti-depressant drugs are being routinely and inappropriately prescribed to

⁶⁵ There were 9600 uses of restraint during August 2015 in mental health wards in England, of which 16.5 per cent (1591) were prone restraint (NHS Benchmarking data August 2015). The Learning Disability Census 2015 found that one third of patients with a learning disability were subject to the use of restraint in 2015-16, a figure largely unchanged since 2013-15. 13% were subject to seclusion, an increase from 11% in 2013 and 2014 (The Learning Disability Census 2015)

Note: the Census has not continued from 2015, and statistics on restraint and seclusion in inpatient services will no longer be collected. From 2016, data on the use of restraint and other restrictive interventions will be included in the Health and Social Care Information Centre (HSCIC)'s Mental Health and Learning Disability Minimum Dataset.

⁶⁶ Committee on the Rights of the Child Concluding Observations concerning the United Kingdom June 2016

⁶⁷ Positive and Proactive Care: reducing the need for restrictive interventions', (2014) Department for Health <https://www.gov.uk/government/publications/positive-and-proactive-care-reducing-restrictive-interventions>

persons with learning disabilities.^{68,69} In June 2016, the government, NHS England, several professional bodies and the Challenging Behaviour Foundation published a shared pledge to tackle the over-prescribing of anti-psychotic drugs to people with learning disabilities and/or autism.⁷⁰ There is growing concern about the inappropriate use of antipsychotic drugs for dementia patients living in residential or nursing care homes.⁷¹

Immigration detention

Evidence strongly suggests that significant numbers of those detained under immigration rules in England and Wales experience acute mental health problems, related both to their past life and to their conditions of detention.⁷² Moreover, their situation and treatment may often amount to a grave and systemic violation of the right to freedom from torture, inhuman and degrading treatment.⁷³ An independent review into the welfare of 'vulnerable

⁶⁸ A 2015 study found that in England on any given day 17% of persons with learning disabilities were routinely being prescribed anti-psychotic drugs, despite only 4% exhibiting psychosis, 17% were being prescribed anti-depressants while only 7% have depression, and 16% were prescribed one or other drug while having neither psychosis or depression. Prescribing of psychotropic drugs to people with learning disabilities and/or autism by general practitioners in England (2015) Public Health England.

⁶⁹ 72 per cent of inpatients with a learning disability (2,155) received antipsychotic medication either regularly or 'as and when needed' in the 28 days prior to the Learning Disability Census collection in 2015, compared to 73 per cent (2,345) in 2014 The Learning Disability Census 2015

⁷⁰ Over-medication pledge <https://www.england.nhs.uk/2016/06/over-medication-pledge/>

⁷¹ Szczepura A, Wild D, Khan AJ, et al. Antipsychotic prescribing in care homes before and after launch of a national dementia strategy: an observational study in English institutions over a 4-year period. *BMJ Open* 2016

⁷² Review into the Welfare in Detention of Vulnerable Persons A report to the Home Office by Stephen Shaw
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

⁷³ There have been six recent cases involving people in immigration detention where the British courts had found the Home Office to be in breach of Article 3 of the European Convention on Human Rights, all involving persons with mental health problems. For details see Appendix 4 Review into the Welfare in Detention of Vulnerable Persons A report to the Home Office by Stephen Shaw 2016 Home Office
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

persons' in detention published in January 2016 suggested that such grave violations were systemic.⁷⁴

Stakeholders told us that the Home Office has deliberately fostered a 'culture of disbelief' in order to deter asylum seekers, which means that torture survivors with mental or physical impairments are routinely detained. There has also been a deliberate policy intention to create a 'hostile environment' for people presumed to be illegal immigrants, to encourage them to leave voluntarily.⁷⁵ This can mean destitution and homelessness and/or indefinite detention in asylum removal centres without judicial oversight.

Prisoners with disabilities

The Prisons and Probation Ombudsman for England and Wales has identified the failure of prisons to make reasonable adjustments (accommodation) for disabled prisoners as a significant problem.⁷⁶ This failure can give rise to inhuman and degrading treatment.⁷⁷

Recommendations

We recommend that the Committee calls upon the UK and Welsh Governments to:

- Adopt an explicit commitment to move towards health services that are free of seclusion and restraint and to set

⁷⁴ "There are many other cases in which the court has not found a breach of Article 3 but where it found that detention was unlawful. In other words, the lack of other findings of Article 3 breaches in other cases is "very far from an indication that the five cases... are outliers in terms of the substantive factual criticisms of the treatment of vulnerable detainees." Review into the Welfare in Detention of Vulnerable Persons A report to the Home Office by Stephen Shaw 2016 Home Office

⁷⁵ See: <http://www.cityam.com/245394/theresa-mays-hostile-environment-become-our-hostile-nation>

⁷⁶ See Prisons and Probation Ombudsman for England and Wales Annual Report 2011-12 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236024/8429.pdf

⁷⁷ As was noted in *Price v United Kingdom* (2001): '*to detain a severely disabled person in conditions where [s]he is dangerously cold, risks developing sores because her bed is too hard or unreachable, and is unable to go to the toilet or keep clean without the greatest of difficulty, constitutes degrading treatment contrary to Article 3.*'

measures for the reduction in the inappropriate use of medication.

- End unlawful immigration detention.
- Ensure the provision of reasonable accommodation to disabled persons serving custodian sentences in prisons.

2.12. Article 16 – Freedom from violence, exploitation and abuse

Disability related harassment and hate crime

There were estimated to be 56,000 incidents of disability hate crime each year 2010-11 to 2013-14.⁷⁸ While levels of reporting and recording of disability hate crime by the police, and the number of convictions have been increasing, 93% of incidents continue to go unrecorded.^{79,80} Third party reporting centres set up by Disabled Peoples Organisations with police and Crown Prosecution Service involvement have shown progress in increasing reporting and improving support.

Disabled children, and especially children with learning disabilities or autism or Aspergers Syndrome, are more likely to report being bullied.⁸¹

⁷⁸ Coleman, Nick & Sykes, Wendy Research report 103: Crime and disabled people - Measures of disability-related harassment 2016 Update (2016) Equality and Human Rights Commission <https://www.equalityhumanrights.com/en/publication-download/research-report-103-crime-and-disabled-people>

⁷⁹ There were 3652 disability hate crimes recorded by the police in England and Wales in 2015/16
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559319/hate-crime-1516-hosb1116.pdf

⁸⁰ Source:
https://www.cps.gov.uk/news/latest_news/more_hate_crimes_prosecuted_by_the_crown_prosecution_service_than_ever_before/

⁸¹ 40% of children and young people without disabilities have reported being bullied, compared to 58% with a physical disability, 62% with a learning disability, and 67% with autism or Asperger syndrome Equality and Human Rights Commission, *Is Britain Fairer? Evidence Paper Series* (November 2015) Evidence Paper Domain E: Education:
http://www.equalityhumanrights.com/sites/default/files/uploads/IBF/Evidence-papers/IBF_EPS_E_Education_final.pdf

Violence against women with disabilities

Research indicates a higher incidence of domestic violence amongst disabled women compared with non-disabled women.⁸² In England, research has concluded that ‘cutbacks in national budgets have led to reductions in the provision of local services and the loss of specialised expertise’.⁸³ Public health guidance recommends that more needs to be done to help people, including disabled women, who find domestic violence and abuse services inaccessible or difficult to use.⁸⁴ Despite the introduction of the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 similar evidence on the inconsistent provision of accessible domestic abuse support services is available in relation to Wales.⁸⁵

Protection against violence and abuse of people in receipt of care and support

Section 73 of the Care Act 2014 extended the Human Rights Act 1998 (HRA) to explicitly cover all those receiving care funded or arranged by a local authority. However while welcome, this was only a partial closure of the protection gap that continues to leave those whose care is funded by another public body, such as the National Health Service or who are paying and arranging for their own care, outside the scope of the HRA.⁸⁶

⁸² Sin CH *et al* (2009) ‘Disabled people’s experiences of targeted violence and hostility’, Research Report 21.

⁸³ Walby, S *et al* (2012) ‘Measuring the impact of cuts in public expenditure on the provision of services to prevent violence against women and girls’, Northern Rock Foundation and Trust for London.

⁸⁴ NICE (2014) Public health guidance 50 ‘Domestic violence and abuse: how health services, social care and the organisations they work with can respond effectively’.

⁸⁵ Welsh Women’s Aid, Disability Wales, University of South Wales
www.disabilitywales.org/projects/domestic-abuseof-disabled-women-in-wales/

⁸⁶ The Care Act 2014 closed a loophole in the Human Rights Act relating the definition of ‘public authority’ which had meant that private providers of care – whether in care homes or a person’s own home – were not subject to the Act even when the person’s care was funded by a local authority. Given the vast majority of care is provided by non-State actors, this had been a major gap in protection. However, this change did not address situations where a person’s care is funded under ‘Continuing Health Care’ by the National Health Service.

Recommendations

We recommend that the Committee calls upon the UK and Welsh Governments to:

- Adopt comprehensive strategies aimed at preventing and reducing the incidence of disability-related harassment and hate crime, including through action to tackle prejudice and to close the gap between overall incidence of disability hate crime, reported and recorded incidents and convictions. In particular, it should actively support the development of third party reporting centres.
- Adopt strategies to increase the availability of accessible support for disabled women who have experienced violence.
- Close the gap in human rights protection faced by those funding their own care and support or whose care is arranged by public bodies other than local authorities.

2.13. Article 18 - Liberty of movement and nationality

On ratifying the CRPD the UK government entered a reservation regarding Article 18, clarifying that the Convention did not create new or additional rights for disabled people to enter or remain in the United Kingdom.

Following the Home Office review of the reservation in 2010, the Minister announced the reservation was necessary 'to retain the right to apply immigration rules, to avoid creating an unnecessary new avenue to challenge immigration decisions due to the optional protocol, and to preserve the right to safeguard the public purse from excessive demands which may be placed on it'.

Recommendation

We recommend that the Committee calls upon the UK government to:

- Withdraw the reservation which as currently drafted is so broad and general as to be incompatible with the object and purpose of the Convention.

2.14. Article 19 – Living independently and being included in the community

Grave and systemic violations

We note the report and support the findings and recommendations of the CRPD Committee’s Inquiry concerning the United Kingdom under Article 6 of the Optional Protocol to the Convention, published 7 November 2016.

Independent living and the law in England and Wales

In England and Wales, a complex patchwork of legislation and regulation supports or has bearing on the right to live independently and to be included in the community. The Care Act 2014⁸⁷ and the Social Services and Well-being (Wales) Act 2014⁸⁸ in England and Wales respectively set out the duties on local authorities relating specifically to support services for disabled people, and regarding the choice and control disabled people should be able to exercise over support, including where and with whom to live. The English and Wales statutes are both founded on the same list of ‘wellbeing’ principles. Statutory guidance in England states that these are intended to reflect the concept of independent living, while the equivalent guidance in Wales says that local authorities must have due regard to the CRPD.⁸⁹ The

⁸⁷ Care Act 2014 <http://www.legislation.gov.uk/ukpga/2014/23/enacted>

⁸⁸ Social Services (Wellbeing) Act 2014
http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf

⁸⁹ In the statutory guidance accompanying the England Care Act 2014 the government states that: Although not mentioned specifically in the way that “wellbeing” is defined, the concept of “independent living” is a core part of the wellbeing principle. Section 1 of the Care Act includes matters such as individual’s control of their day-to-day life, suitability of living accommodation, contribution to society – and crucially, requires local authorities to consider each person’s views, wishes, feelings and beliefs.

The wellbeing principle is intended to cover the key components of independent living, as expressed in the UN Convention on the Rights of People with Disabilities. Supporting people to live as independently as possible, for as long as possible, is a guiding principle of the Care Act. The language used in the Act is intended to be clearer, and focus on the outcomes that truly matter to people, rather than using the relatively abstract term “independent living” Care Act 2014 statutory guidance para 1.17 -1.18
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315993/Care-Act-Guidance.pdf

The statutory guidance in Wales says that:

‘when exercising social services functions in relation to disabled people who need care and support and disabled carers who need support, local authorities must have

well-being principles are not however intended to establish individual or enforceable rights. Neither statute therefore includes a *right* to live independently and be included in the community.

With respect to the obligation to *progressively realise* the economic and social elements of Article 19, the Social Services and Well being (Wales) Act established duties on Ministers to issue a statement on the outcomes to be achieved in relation to the wellbeing of people in Wales who need care and support. Ministers are empowered to issue codes of practice to local authorities concerning their expected performance in meeting the outcomes.⁹⁰ While the UK government has set minimum national threshold of eligibility for adult care and support in England⁹¹, the legislation contains no provision equivalent to the provisions in Wales regarding the setting of outcomes and Ministers have consistently argued that implementation, including commitment of resources towards care and support is a matter for local authorities to determine. There has been a sharp decline in both spending on and the availability of adult social care in England and Wales.^{92,93} This has impacted not only on the overall quantum of care but also on the degree to which disabled people are able to exercise choice and control.⁹⁴ During the engagement events with disabled people that fed into this report, we heard personal testimony of people having to live with people they do not choose to live with and having to move home when their support needs change, with no secure place they can call home.

due regard to the United Nation Convention on the Rights of Persons with Disabilities.’

Para 67 <http://www.ccwales.org.uk/codes-of-practice-and-statutory-guidance/>

⁹⁰ Sections 8&9 Social Services and Well Being (Wales) Act 2014

http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf

⁹¹ http://www.legislation.gov.uk/ukxi/2015/313/pdfs/ukxi_20150313_en.pdf

⁹² In England, at least 400,000 fewer people are receiving care and support than in 2009 (29% fewer) against a trend of rising demand from England’s ageing population NHS Digital, Community Care Statistics, 2013/14. Accessed at digital.nhs.uk

⁹³ In Wales, 5000 fewer people are now receiving care and support compared to 2011 Data from Stats Wales. Accessed at statswales.gov.wales

⁹⁴ A third of respondents (33%) to a 2016 survey by In Control said that the level of choice and control they enjoyed over their support had reduced or reduced significantly over the past year <http://www.in-control.org.uk/news/in-control-news/report-on-the-independent-living-survey-2016.aspx>

There is also evidence that local authorities with responsibility for social care and Clinical Commissioning Groups with oversight of Continuing Health Care are either considering or implementing policies which will result in disabled people with high support needs offered only residential care provision.^{95,96}

The absence of a statutory right to independent living means that the adequacy of provision of support services and the opportunity for disabled people to exercise choice and control remains vulnerable to retrogression, is unmonitored and unenforceable.

In its 2012 inquiry report on the right of disabled people to independent living the Joint Parliamentary Committee on Human Rights recommended:

- ‘that all interested parties, governmental and non-governmental, immediately start work on assessing the need for and feasibility of free-standing legislation to give more concrete effect in UK law to the right to independent living.
- that the Government publish their assessment of the need for and desirability of such free standing legislation implementing the right to independent living in the light of the forthcoming first report of the UN Committee on Disabilities following its scrutiny of the UK's first compliance report.’⁹⁷

Implementation of the right to independent living – strategy and coordination

As the Joint Parliamentary Committee on Human Rights has noted: ‘The nature of independent living strongly suggests the need for coordinated strategy and action at the national and local

⁹⁵ See: ‘Clock turned back on rights of people with a learning disability’ Guardian Newspaper 14 October 2016 <https://www.theguardian.com/social-care-network/2016/oct/14/rights-learning-disability-residential-care>

⁹⁶ See: ‘More than 40 NHS organisations have policies of concern on institutional care’ Disability News Service, January 2017 <http://www.disabilitynewsservice.com/more-than-40-nhs-organisations-have-policies-of-concern-on-institutional-care/>

⁹⁷ Implementation of the Right of Disabled People to Independent Living - Twenty-third Report of Session 2010–12 (March 2012) Joint Parliamentary Committee on Human Rights

level, both cross-departmentally, between the different levels of government, and with non-governmental actors'⁹⁸

To these ends, the Independent Living Strategy (ILS) was a cross-government project, coordinated by the Office for Disability Issues. It was published in 2008 and aimed to fill the gap "between national policy and people's real experiences." The second annual report by the Independent Living Scrutiny Group, published in February 2011, says "As we move to the midway point of the five year strategy, we would expect to be seeing indications of the positive impact of the action plan. Unfortunately, this has not really been the case". It noted that direct payments and personal budgets for adult social care had increased choice and control for those disabled people receiving them, and advocated the continuing development of personalisation. However, it raised concerns about the impact of funding cuts and benefit reform, and about continuing barriers faced by disabled people in terms of access to housing, transport and employment. The strategy was not renewed at the end of the five year period in 2013 and nothing purely on independent living has taken its place. While UK Government Fulfilling Potential strategy has outcome indicators, including areas such as increased choice and control⁹⁹ and in 2013 Government committed to publishing progress against them, there is nonetheless no co-ordinated action across Government to achieve the right to live independently and to be included in the community in England.

The Welsh Government is presently reviewing the 'Framework for Action on Independent Living' which was published in 2013 and which explicitly aims to fulfill obligations arising from the UNCRPD.¹⁰⁰ While the framework has been welcomed by disabled people and their organisations, it is felt that implementation is

⁹⁸ Ibid

⁹⁹ see:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320745/making-it-happen.pdf

¹⁰⁰ Framework for Action on Independent Living (2013) Welsh Government
<http://gov.wales/topics/people-and-communities/equality-diversity/rightsequality/disability/framework-for-action/?lang=en>

frustrated by a lack of accountability for ensuring actions are achieved by public bodies operating at the local level.

Recommendations

We recommend that the Committee calls upon the UK and Welsh Government to:

- Reflect upon and take action in relation to the findings and recommendations of the CRPD Committee's Inquiry into the United Kingdom under Article 6 of the Optional Protocol to the Convention, published 7 November 2016.
- Consult on the merits of establishing a freestanding right to live independently and to be included in the community.

We recommend that the Committee calls upon the UK government to:

- Work in partnership with local government, other public agencies and disabled people's organisations to develop and implement a new Independent Living Strategy, including coordination and monitoring mechanisms.

We recommend that the Committee calls upon The Welsh Government to:

- Ensure that the revised Framework for Action on Independent Living in Wales requires local agencies to reflect national objectives within local plans, including equality schemes.

2.15. Article 20 – Personal Mobility

Access to adapted motor vehicles

Many disabled people are losing access to their sole means of transport via the Motability scheme¹⁰¹ as a consequence of the introduction of the Personal Independence Payment.^{102,103}

Assessing fitness to drive

In 2016 the Parliamentary and Health Service Ombudsman found that the Driver and Vehicle Licensing Authority has left people living with health conditions/impairments including dementia ‘in limbo for years as a result of major failings by the Driver and Vehicle Licensing Agency (DVLA) in assessing people’s fitness to drive, leaving them unable to work and cutting them off from their friends and families.’¹⁰⁴

Recommendations

We recommend that the Committee calls upon the UK Government to:

¹⁰¹ See: <http://www.motability.co.uk>

¹⁰² Declan O'Mahony, the Director of Motability, has provided figures for the number of DLA claimants who have lost their entitlement to their Motability vehicle as a result of the reassessment for Personal Independence Payment:

As the Department for Work and Pensions (DWP) has reassessed customers receiving DLA, some 21,400 to date have been awarded the same level of mobility support under PIP and have remained on the Scheme. At the same time, we have seen around 17,200 existing Scheme customers lose eligibility to the upper level of mobility support as they are reassessed from DLA to PIP

¹⁰³ The Government’s own projections assume that by the time PIP has been fully implemented (May 2018), more than 400,000 fewer claimants will be eligible for the enhanced mobility component than are currently eligible for the higher rate mobility component of DLA
See

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180964/pip-reassessments-and-impacts.pdf However, because the criteria for PIP enables some disabled people with non-physical impairments to be eligible for the enhanced mobility component who were not previously, it is believed that around 600,000 physically disabled people in receipt of the higher rate mobility component of DLA will lose entitlement to the higher/enhanced rate and therefore their eligibility for the Motability scheme Hansard, Baroness Hollis, HL deb, col 940, 25 February 2013

¹⁰⁴ Driven to despair – how drivers have been let down by the Driver and Vehicle Licensing Authority (2016) Parliamentary and Health Services Ombudsman See: <http://www.ombudsman.org.uk/about-us/news-centre/press-releases/2016/new-report-shines-a-light-on-major-failings-by-the-dvla-in-assessing-peoples-fitness-to-drive>

- Set out its actions to mitigate the negative impact on personal mobility, independence and inclusion arising from the introduction of the Personal Independence Payment
- Implement all the Parliamentary and Health Service Ombudsman recommendations in relation to the DVLA and assessment of people's fitness to drive

2.16. Article 23 – Respect for home and the family

Segregation and isolation from family and community

Significant numbers of inpatients with learning disabilities or mental health problems, including those deprived of their liberty, frequently spend long periods at considerable distance from their families and home communities.^{105,106,107}

Separation of children from disabled parents

Around 40% of parents in the English National Survey of Adults with Learning Disabilities were not living with their children. 60% of the mothers with learning disabilities in the English National Survey, who were living on their own, or with a partner or husband, did not have their children under 18 living at home with them.¹⁰⁸

There appears to be great variation between different areas of the country in relation to social care practice and court decisions

¹⁰⁵ The Learning Disability Census for England 2015 reports that the median average length of stay was 554 days for the 2015 census, compared to 547 in 2014 while the median average distance from home was 38.6km for the 2015 census, compared to 34.4km for the 2014 census. The proportion of inpatients receiving care more than 100km away from home in 2015 was 23 per cent (670 patients) an increase from 19 per cent (570 patients) in 2014.

¹⁰⁶ An investigation by the BBC and Community Care magazine into the care of persons with mental health problems found that among the trusts that provided figures for a five year period, use of out-of-area placements rose 236 per cent, from 1,215 in 2011-12 to 4,093 in 2015-16 See: <http://www.communitycare.co.uk/2016/05/20/mental-health-beds-crisis-thousands-acutely-ill-patients-sent-area-care/> and <http://www.bbc.co.uk/news/health-36333850>

¹⁰⁷ While there has been a decline in resident patients with learning disabilities in Wales since 2006, in March 2016 63% had been resident for 2 years or more. Patients in mental health hospitals and units (31 March 2016) Welsh Government <http://gov.wales/docs/statistics/2016/160831-patients-mental-health-hospitals-units-31-march-2016-en.pdf>

¹⁰⁸ Secondary analysis of data from Emerson, E et al, 2005, *Adults with learning difficulties in England*

regarding parents with learning disabilities and their children (and also in relation to parents with mental health conditions and other impairments). In one local authority about one in six family court proceedings involved at least one parent with a learning disability; in around 75% of these cases the children were permanently removed¹⁰⁹ Another study, however, found that children were permanently removed from their families in less than one fifth of cases involving parents with learning disabilities. Most of these children were fostered rather than adopted.¹¹⁰

Children with disabilities in care

The UN Committee on the Convention on the Rights of the Child (UNCRC) has expressed concern about the increased number of disabled children in alternative care settings. While data is not collected sufficient to determine the exact number of disabled children who are looked after there is evidence that they are more likely to be looked after, remain in care for longer and have a higher risk of being placed inappropriately and experience a higher turnover of placements in comparison to non-disabled children.^{111,112}

Family breakdown

Parents with disabled children are more likely to experience relationship breakdown than those who don't have a disabled child.¹¹³ A 2011 survey by the organisation Contact a Family found that 21 % of families with disabled children across the UK said that

¹⁰⁹ Booth et al, 2005, Care proceedings and parents with learning difficulties, *Child and Family Social Work*, 10, 4, 353-360.

¹¹⁰ Cleaver, H and Nicholson, D, 2007, *Parental Learning Disability and Children's Needs*

¹¹¹ Baker, C (2011) IRIS Insights, No 11 'Permanence and stability for disabled looked after children'

¹¹² In 2014, just over one in four of looked after children have SEN associated with learning disabilities (Figure 6.1; Table 6.2). Using the number of children on school rolls in January 2014 as the denominator (the potential number of children for whom data matching could take place) indicates that the risk per 1,000 children of being looked after continuously for at least 12 months by the local authority as of March 31 2014 was five for all children, 23 for children with MLD, 31 for children with SLD, and 40 for children with PMLD – People with Learning Disabilities in England 2015 Public Health England

¹¹³ Exploring disability, family formation and break-up: Reviewing the Evidence (2008), Department for Work and Pensions

isolation has led to break up of their family life, including as a consequence of lack of support from statutory services, not having enough money to participate fully and as a result of discrimination and stigma.¹¹⁴ During our engagement events we also heard how the lack of financial assistance to enable the parents and families of Deaf children to learn BSL acts as a barrier to communication within families.

Recommendations

We recommend that the Committee call upon the UK and Welsh Governments to:

- Accelerate the development of community based supports for persons with learning disabilities and/or mental health problems sufficient to prevent their isolation and segregation from the community.
- Promote greater national consistency with respect to the actions of local authorities to balance the rights of parents with learning disabilities and/or mental health conditions with the best interests of their children, including through the provision of timely and appropriate support.
- Take targeted action to sustainably reduce the numbers of disabled children in alternative care settings.
- Ensure families with disabled children are able to access support sufficient to enjoy a good family life, including communication support.

2.17. Article 24 – Education

Reservation and interpretive declaration

On ratifying the CRPD in 2009, the UK government entered a reservation and interpretive declaration regarding Article 24. We

¹¹⁴ Forgotten Families - The impact of isolation on families with disabled children across the UK (2011) Contact a Family

believe that these are incompatible with the object and purpose of the Convention and should be withdrawn.

A trend towards non-inclusive schooling

The proportion of children with special educational needs in England and Wales attending special schools has increased while the proportional attending State-funded secondary schools has declined over the past decade.^{115,116}

The present UK government is not supportive of inclusive education. In its 2010 general election manifesto the Conservative Party – which went on to form a coalition government 2010-15 – said that it would ‘end the bias towards the inclusion of children with special needs in mainstream schools.’ In its 2015 General Election manifesto, the Party – which went on to win an outright majority – reported that it had ‘created 2,200 more special schools places through our free schools programme.’ Evidence we received from disabled people included a call from some Deaf people for separate education in British Sign Language. Nevertheless, the major priority is significant progress on inclusive education. Following its examination of the United Kingdom in 2016, the Committee on the Rights of the Child recommended that as part of a comprehensive human rights based strategy for inclusion that the State Party:

‘Set up comprehensive measures to further develop inclusive education, ensure that inclusive education is given priority over the placement of children in specialized institutions and classes and make

¹¹⁵ Between 2010 and 2016 the percentage of children in England with a statement of special educational needs or Education Health and Care Plan attending maintained special schools increased from 38.2% to 42.9% while those attending State funded secondary schools declined from 28.8% to 23.5% Special Educational Needs in England (January 2016) Department for Education https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539158/SFR29_2016_Main_Text.pdf

¹¹⁶ In Wales, the number of children attending special schools also rose from 4,040 pupils in 2006-7 to 4542 in 2015-16. Stats Wales Pupils by local authority, region and type of school <https://stats.wales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Pupil-Level-Annual-School-Census/Pupils/pupil-by-localauthorityregion-typeofschool>

mainstream schools fully accessible to children with disabilities.¹¹⁷

The Additional Learning Needs and Education Tribunal (Wales) Bill was introduced to the National Assembly for Wales in December 2016, having first introduced a **White Paper** in May 2014 setting out proposals to introduce a new legislative framework for supporting children and young people with additional learning needs.¹¹⁸

School exclusions

Research into school exclusions across the UK has identified that disabled children and those with additional needs are more likely to be excluded from school, and this includes unlawful exclusions.^{119,120}

Educational attainment

Although not all children identified as having special education needs (SEN) are disabled, and not all disabled children have SEN, data concerning children with SEN provides a strong indicator of the situation of disabled children generally. The attainment gap between students with SEN and those without has grown since 2009 in both England and Wales.¹²¹

¹¹⁷ Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* (2016) Committee on the Rights of the Child

¹¹⁸ See: <http://gov.wales/topics/educationandskills/schoolshome/pupilsupport/additoinal-learning-needs-reform/?lang=en>

¹¹⁹ Children's Commissioner for England (2013) 'School Exclusion Inquiry Report: Always Someone Else's Problem'; Contact a Family (2013) 'Falling through the net, Illegal exclusions the experiences of families with disabled children in England and Wales

¹²⁰ 5.17% of pupils with SEN without a statement received one or more fixed period exclusion in 2013/14 compared to 6.42% of pupils with statements and 1.08% of pupils with no SEN
Absence and exclusions additional analysis for pupils with special educational needs (SEN) (January 2016) Department for Education
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/495651/SEN_Absence_Exclusions_ad_hoc_release_v4.pdf

¹²¹ The Equality and Human Rights Commission research for 'Is Britain Fairer?' revealed significant inequalities in education: In England 18.5% of children with SEN achieved a 'good level of development' compared to 65.6% of those without, and 23.4% of children with SEN achieved at least five A*-C GCSEs, compared with 70.4% of those without. This 'attainment gap' had actually increased since 2009. Wales had also seen an increased gap, although it had narrowed in Scotland

Support for participation in Higher Education

The government has acknowledged that reforms to Disabled Students Allowance (DSA), which came into force on 1 September 2016, are likely to have a number of negative effects on the rights of disabled people.¹²² In mitigation, the government anticipates that higher education institutions will absorb some related costs as part of their obligation to make reasonable adjustments under s20 of the Equality Act 2010. However, in doing so it has also recognised that this may ‘increase the potential for discrimination by institutions in circumstances where they fail to comply with those duties.’¹²³

Recommendations

We recommend that the Committee calls upon the UK and Welsh Governments to:

- Engage positively with the recommendation made by the Committee on the Rights of the Child to pursue a fully inclusive education system, whereby participation in mainstream schools is generally preferred over education in specialised institutions. In doing so the Committee should also call on the UK government to withdraw its reservation and interpretive declaration to Article 24.
- To set out their aims and strategies to reduce the number of school exclusions of disabled pupils.
- To set targets and develop plans to reduce the educational attainment gap between disabled and non-disabled pupils and students at each level.
- To set out plans to monitor the impact of reform to Disabled Students Allowance and the mitigating steps it will take if the

http://www.equalityhumanrights.com/sites/default/files/uploads/IBF/Evidence-papers/IBF_EPS_E_Education_final.pdf

¹²² Disabled Students Allowance Consultation – Equality Analysis (December 2015)
Department for Business, Information and Skills

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/481527/bis-15-658-disabled-students-allowances-equality-analysis.pdf

¹²³ Ibid

reforms lead to a rise in disability discrimination by higher education institutions.

We recommend that the Committee encourages the Welsh Government to:

- Progress with plans to develop and implement the proposed Additional Learning Needs and Educational Tribunals Bill in line with the standards in the CRPD.

2.18. Article 25 – Health

Premature deaths of persons with learning disabilities and/or mental health conditions

The Confidential Inquiry into Premature Deaths of People with Learning Disabilities (CIPOLD), funded by the Department for Health found that men with learning disabilities died, on average, 13 years sooner than men in the general population, and women with learning disabilities died 20 years sooner than women in the general population. 43% of the deaths of people with learning disabilities were unexpected.¹²⁴ The inquiry identified avoidable delays in diagnosis, further investigation or specialist referral, the failure of healthcare providers to make reasonable adjustments (accommodation) and poor coordination between care providers as major contributory factors. It also identified lack of adherence to and understanding of the Mental Capacity Act 2005 in particular regarding assessments of capacity, the processes of making ‘best interest’ decisions and when an Independent Mental Capacity Advocate (IMCA) should be appointed. The Department of Health reported in September 2014 on action taken following the report, but has not reported since.¹²⁵

Nearly half (46%) of people with severe mental health problems have a long-term physical health condition and are at risk of losing

¹²⁴ Heslop P et al Confidential Inquiry into premature deaths of people with learning disabilities (CIPOLD) Final report (2013) University of Bristol
<http://www.bristol.ac.uk/cipold/reports/>

¹²⁵ Premature Deaths of People with Learning Disabilities Progress Report (September 2014) Department for Health
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/356229/PUBLISHED_42715_2902809_Progress_Report_Accessible_v04.pdf

on average 10-20 years of their lifespan due to physical ill-health.¹²⁶

Inaccessible health screening

During the engagement events that contributed to the production of this report women with disabilities told us of the inaccessibility of cancer screening centres. This confirms empirical evidence that disabled people are less likely to receive health checks, screening tests and treatment.¹²⁷

Mental health care

Mental health services are chronically underfunded and currently 75 per cent of people with common mental health problems such as anxiety and depression, receive no appropriate treatment, compared with 25 per cent of people with physical health problems. Only 65 per cent of people with severe mental health problems receive treatment.¹²⁸

Recommendations

We recommend that the Committee call upon the UK and Welsh Governments to:

- Outline their actions to address health inequalities experienced by disabled people, including persons with learning disabilities and persons with mental health problems.

¹²⁶ Improving the physical health of adults with severe mental illness: essential actions' (2016) - A report of the Academy of Medical Royal Colleges and the Royal Colleges of General Practitioners, Nursing, Pathologists, Psychiatrists, Physicians, the Royal Pharmaceutical Society and Public Health England

¹²⁷ 'How Fair is Britain, Equality, Human Rights and Good Relations in 2010 Chapter 6 (2010) Equality and Human Rights Commission

¹²⁸ Ormel et al, Disability and treatment of specific mental and physical disorders across the world, British Journal of Psychiatry, 2008

2.19. Article 27 – Work and Employment

Grave and systemic violations

We note the report and support the findings and recommendations of the CRPD Committee's Inquiry concerning the United Kingdom under Article 6 of the Optional Protocol to the Convention, published 7 November 2016.

Employment support

Successive governments have tightened eligibility criteria, extended and increased the severity of conditionality and sanctions and cut the rates of benefit payments for disabled people receiving disability related out of work benefits under the rubric of 'welfare to work.' However, there is little evidence that measures to support disabled people into work have been effective.¹²⁹ The employment rate of disabled people is 48%, which represents a 32% gap between disabled and non-disabled people's employment rate.¹³⁰ This figure obscures deep inequalities among disabled people. For example, Just 5.8% of adults with a learning disability known to local authorities are in a job.¹³¹

In October 2016 the UK Government launched a Green Paper heralding potentially more promising approaches to employment support, including peer support for employment, work experience for young disabled people and an innovation fund. However, the Employment Related Support Association estimates that the planned reduction in funding from the current Work Programme and Work Choice to the new Work and Health Programme will lead to a reduction in numbers of disabled people supported from 300,000 to 160,000 over a 2.5-year period.¹³²

¹²⁹ The Work Programme (July 2014) National Audit Office <https://www.nao.org.uk/wp-content/uploads/2014/07/The-work-programme.pdf>

¹³⁰ Office for National Statistics. *Labour Force Survey, Q2 2016*; 2016.

¹³¹ NHS Digital. *Adult Social Care Statistics*; 2016.

¹³² See: <http://ersa.org.uk/media/ersa/ersa-statement-new-work-and-health-programme-green-paper>

The Welsh Government 's Cabinet Secretary for Communities and Children and the Minister for Skills and Science has agreed to a programme of early engagement with key external stakeholders, regarding the development of a policy for increasing employability and plans for its implementation in Wales.

Access to work scheme

The government's Access to Work scheme, which provides support to disabled people and employers with workplace adjustments, equipment and support, has been shown to yield £1.48 in tax revenues to the Treasury for every £1 invested.¹³³ However, it was reported in February 2015 that some recipients of Access to Work were losing support when their cases were reviewed.¹³⁴ In addition, while the government has announced its intention to introduce a range of welcome measures to enhance the effectiveness of the scheme, including increasing overall spending to enable an additional 25,000 people to access the scheme by 2020, it has also announced its intention to restrict the value of any award for ongoing support to the equivalent of one and a half times the average salary, or £40,800 per year in October 2015.¹³⁵ This restriction is likely to have the most significant impact on Deaf users of British Sign Language, who need support from freelance British Sign Language interpreters to enable them to do their jobs.

Employer engagement

In 2013 the UK Government launched 'Disability Confident' to promote the value of employing disabled people to employers. It was unclear what the precise aims of the programme were and it is not clear at this point what the achievements have been. The scheme has recently been relaunched, with 3 levels of commitment that employers can make on a basis of self-

¹³³ Sayce, L (2011) Getting in, staying in and getting on Disability employment support fit for the future (TSO)

¹³⁴ 'Most Access to Work recipients "have their support cut after reviews"', Disability News Service, 2 February 2015.

¹³⁵ Mark Harper MP (2015) Written Ministerial Statement on Access to Work, 12 March 2015.

assessment with no external monitoring or review. However, it could in theory grow without impacting on actual numbers of disabled people employed, since employers commit to processes, not outcomes.

Skills and qualifications

Evidence shows a correlation between disability and educational attainment: disabled people (of all ages) are twice as likely to have no qualifications as non-disabled people, and are also less likely to have higher level qualifications. The correlation works both ways: disability may lead to lower educational attainment, but people who have experienced educational disadvantage are also more likely to become disabled later in life.¹³⁶

The low skill profile of disabled people is a major barrier to employment,¹³⁷ making training, or retraining when an individual's impairment prevents them from continuing in their previous job, an important part of the mix of initiatives to help disabled people realise their right to work. The UK Government has recently announced measures to make apprenticeships more inclusive and have supported specific initiatives to spread good practice while the Welsh Government intends to create a minimum of 100,000 all-age apprenticeships. These developments are welcome. Nonetheless, disabled people informed us that work experience is often not accessible to them; and strategies to improve formal skills and qualifications continues to be a 'missing link' in policy and programmes to improve the employment opportunities of disabled people. The government's recent Green Paper on disability employment links together policy on health and employment: there is a similar need to 'join up' employment and skills policy.

A significant pay gap of 9% between disabled and non-disabled people persists. In 2013, disabled people had an average pay rate

¹³⁶ Meager and Higgins, Disability and skills in a changing economy.

¹³⁷ Trotter et al, Work in progress: Rethinking employment support for disabled people.

of £9.70/hour, which was £1.00/hour lower than that of non-disabled people (£10.60/hour).¹³⁸

Reservation concerning employment in the armed forces

On ratifying the CRPD in 2009 the UK Government entered a reservation regarding Article 27 concerning employment of disabled people in the armed forces. Following a consultation in 2010, the Ministry of Defence (MOD) continued to insist on a blanket exemption of the armed forces from the Equality Act 2010 and to maintain the reservation to Article 24. It is our contention that the exemption is unnecessary as the MOD would continue to be able to define objective and necessary job criteria including in relation to levels of physical and mental fitness and therefore does not present a threat to operational effectiveness. As such, and given the broad discriminatory nature of the reservation, we believe that it is incompatible with the object and purpose of the Convention.

Recommendations

We recommend that the Committee call upon the UK Government to:

- Update it on the development of proposals contained in the Green Paper ‘Improving lives: work, health and disability’ published on 31 October 2016, including how it will mitigate the reduction in spending on specialist employment support.
- To set out milestones towards its target to halve the disability employment gap, with a clear strategy for how this will be achieved, paying particular attention to the employment rates of particular groups including persons with learning disabilities and mental health problems.

¹³⁸ Is Britain Fairer? Evidence Paper Series Domain G – productive and valued activities (2016) Equality and Human Rights Commission
<https://www.equalityhumanrights.com/en/britain-fairer/britain-fairer-report/supporting-evidence/productive-and-valued-activities-domain>

- To explain the steps it will take to mitigate the impact on the jobs and employment prospects of disabled people for whom the cost of support exceeds the upper-limit on Access to Work awards.
- To clarify the intended success measures of Disability Confident in reaching and influencing the behavior and actions of employers, and to provide details of the impact of the programme to date on enhancing the employment prospects of disabled people
- Withdraw its reservation in respect of employment in armed forces and amend the Equality Act 2010 accordingly.

To call on the UK and Welsh Governments to:

- Introduce levers to influence the behavior of employers, including mandatory reporting by large firms, use of procurement as a lever
- Take action to address the significant pay gap between disabled and non-disabled people

To call on the Welsh Government to:

- Ensure that its proposed policy for increasing employability in Wales include specific measures to tackle barriers faced by disabled people in entering and progressing within the workforce including access to appropriate support and training

2.20. Article 28 – Adequate standard of living and social protection

Grave and systemic violations

We note the report and support the findings and recommendations of the CRPD Committee's Inquiry concerning the United Kingdom under Article 6 of the Optional Protocol to the Convention, published 7 November 2016.

Further developments

In addition, we wish to bring to the Committee's attention further plans and proposals which we believe amount to further retrogression:

Section 15 of the The Welfare Reform and Work Act 2016 will, from 2017, abolish the 'Work Related Activity Component' – that is, the enhanced payment over and above the basic rate of ESA paid to people assessed as having limited capability for work and assigned to the Work Related Activity Group. However, present indications are that the category itself and the conditions attached to it will remain. At present rates, the abolition of the Work Related Activity Component will mean that new claimants assessed as having limited capability for work will receive 28 per cent (£30) less per week than current claimants in the WRAG (Similar changes will be made to Universal Credit, which is replacing income-related ESA). When this measure was announced in the Summer 2015 Budget, the rationale was explained as improving "work incentives".¹³⁹ However, as explained above, within the structure of ESA, those placed in the WRAG have not been found "fit for work"; rather, they have been found to have "limited capability for work". Claimants in the WRAG have greater barriers to work than those on Jobseekers' Allowance (JSA) and it generally takes them longer to find work than JSA claimants. Whereas almost 60% of people on JSA are back in work within 6 months, nearly 60% of people in ESA WRAG are still out of work 2 years later.

On 31 October 2016 the Government published 'Improving Lives – work, health and disability Green Paper' setting out broad proposals to reform the Work Capability Assessment. This is a potential opportunity to change a flawed system, co-designing a new approach with disabled people. Though ambiguous, most experts have concluded that the proposals so far envisage a system of discretionary, ad hoc conditionality including for those deemed unfit to work.

¹³⁹ Summer Budget 2015, HC 264 2015-16, para 41.

Recommendations

We recommend that the Committee call upon the UK Government to:

- Review the decision to abolish the ‘work related activity component’ of Employment and Support Allowance.
- Take the opportunity of the Green Paper to engage with disabled people to re-design the WCA and associated systems, in order to re-build trust with disabled people and encourage employment for those able to work.

2.21. Article 29 – Participation in political and public life

Voting in elections

While persons deemed to lack capacity are permitted to vote in elections, the introduction of a new system of voter registration has created a significant barrier to doing so. People are now required to register individually and to complete a ‘declaration of truth.’ Guidance from the Electoral Commission says that third parties can assist a person in making this declaration but that crucially the person must still have the mental capacity to make the declaration of truth. Not being on the electoral register not only acts to disenfranchise individuals, it can affect people’s ability to access financial services, such as credit and insurance. Failure to register to vote when requested to do so by an Electoral Registration Officer is an offence.

Scope found that two-thirds of polling stations had one or more significant access barriers at the 2010 General Election.¹⁴⁰ The Electoral Commission since developed guidance for disabled voters and for polling station staff and noted in a news release prior to the 2015 general election that there should be no barriers to someone casting their vote.¹⁴¹ However, a survey by the Leonard Cheshire Foundation found that almost a quarter (24%) of

¹⁴⁰ Polls Apart Report 2010 Scope
<http://www.scope.org.uk/Scope/media/Documents/Publication%20Directory/Polls-apart-2010.pdf>

¹⁴¹ Polling Station Accessibility Checklist (2011) Electoral Commission

disabled people found it difficult to vote in person at polling stations at the general election on 7 May 2015.¹⁴²

Standing for election

The exact number of disabled members of the UK or Welsh Parliaments is not known as such data is not collected. This is despite a recommendation by the Speakers Conference on Parliamentary representation that the Houses of Parliament should collect data about under-represented groups.¹⁴³ A provision in the Equality Act 2010 (s106) for political parties to publish diversity data about their candidates has also not been enacted.¹⁴⁴

The coalition government 2010-15 established the access to elected office (AEO) fund in 2012. The fund offered grants of between £250 and £40,000 to disabled people to help with additional costs they may face in standing for election as a councillor or MP, such as extra transport or sign language interpreters. However the scheme was put on hold after the May 2015 general election.¹⁴⁵

Welsh Government runs the Diversity in Democracy Programme¹⁴⁶ aimed at increasing the diversity of individuals standing for election to local government. However there is no fund to support disabled people with meeting the costs of reasonable adjustment in standing as an elected member e.g. communication support.

Following the 2015 General Election, the Electoral Commission recommend that:

‘Governments with legislative competence over elections within the UK should amend the definitions of political party and candidate spending so that reasonable expenses that can be attributed to an

¹⁴² <https://www.leonardcheshire.org/support-and-information/latest-news/news-and-blogs/barriers-voting-one-four-disabled-voters-found>

¹⁴³ <https://www.parliament.uk/business/committees/committees-a-z/other-committees/speakers-conference-on-parliamentary-representation/>

¹⁴⁴ <http://www.legislation.gov.uk/ukpga/2010/15/part/7>

¹⁴⁵ <https://www.gov.uk/access-to-elected-office-fund/overview>

¹⁴⁶ See: <http://gov.wales/topics/localgovernment/diversity-in-democracy/?lang=en>

individual's disability are exempt, (as was recently set out in the revised PPERA rules for non-party campaigners).'

Public appointments

The percentage of known appointments and reappointments made to people declaring disabilities has declined from 8.6% in 2010-11 to 4.1% in 2015-16¹⁴⁷ The UK Government is currently working with the Disability Action Alliance to improve public appointment levels amongst disabled people, with the involvement of the Commissioner for Public Appointments. Welsh Government has made a commitment to improve equal representation on public sector boards so that they better reflect the whole of society. No specific targets exist to increase representation of disabled people.

Recommendations

We recommend that the Committee call upon the UK and Welsh Governments to:

- Amend regulations concerning voter registration with respect to the 'declaration of truth' to ensure disabled people are not denied the right to vote.
- Work with the UK Parliament and National Assembly for Wales to collate disaggregated data concerning the participation of disabled people.
- Implement S106 of the Equality Act 2010 in full.
- Replenish and relaunch the Access to Elected Office Fund at the earliest opportunity to include election to the National Assembly for Wales.
- The UK and Welsh Government should implement the recommendation of the Electoral Commission to exempt reasonable expenses connected to disability from the cap on political party and candidate spending during elections.

¹⁴⁷ Annual Survey of Ministerial Appointments and Re-Appointments by the Commissioner for Public Appointments 2015-16 (August 2016) Commissioner for Public Appointments

- Set targets and implement strategies to drive up representation of disabled people among public appointees.

2.22. Article 33 – National implementation and monitoring

Article 33.1 Focal points and coordinating mechanism

The Office for Disability Issues (ODI), situated in the Department for Work and Pensions, which administers social security and arranges employment support, is the UK focal point. Focal points also exist in each of the devolved jurisdictions including in the Welsh Government. Since the Convention was ratified in 2009 the ODI has been subject to a significant reduction in dedicated resources and staff. It is unclear by what mechanism it provides direction and ensures implementation of the Convention across government departments, the devolved jurisdictions, local government and public bodies.

Article 33.2 – monitoring framework

The Equality and Human Rights Commission has been subject to a 75% budgetary cut (contrasted with average real cuts to government department spending of 9.7% 2010/11-2015/16) and has recently been required to implement a further 25% cut to its current budget. Following the latest budget cut the Commission's staffing levels are expected to be reduced to 176, compared to 525 staff in 2007/8. Despite its wide remit, the Commission's financial resources and staff complement are now lower than that of the specialised Disability Rights Commission that it replaced in 2007. Such significant cuts in resources have had an undoubtedly negative impact on the Commission's capacity to promote and enforce equality legislation and the rights of disabled people more generally. For example, the Disability Rights Commission directly supported an average of 55 disability discrimination legal cases in the courts and tribunals each year between 2000-2007.¹⁴⁸ In

¹⁴⁸ Evaluating the impact of the Disability Rights Commission Final Report (2007) <http://disability-studies.leeds.ac.uk/files/library/DRC-Evaluating-the-impact-of-the-Disability-Rights-Commission-FULL-REPORT.pdf>

contrast, the EHRC has supported or intervened in an average of 37.5 cases per year, spanning seven ‘protected characteristics’ including disability, as well human rights.¹⁴⁹

The government has also repealed the duties and powers of the Commission¹⁵⁰ and has limited its capacity to discharge its existing powers via the targeted cutting of financial support. For example, the Commission no longer has a duty to promote good relations and does not provide advice and assistance via a Helpline (this has been outsourced by government). The Commission’s statutory Disability Committee will cease to exist in 2017.

The government has not identified a framework under Article 33.2 beyond the four equality and human rights bodies in England and Wales, Scotland and Northern Ireland. For example, the Children’s Commissioners for England and Wales, the Older Persons Commissioner for Wales, the Care Quality Commission and Care and Social Services Inspectorate Wales and the schools inspectorates Ofsted and Estyn are not identified as part of a framework and it is unclear how embedded the UNCRPD is in their work.

Article 33.3 – involvement of civil society in monitoring

In its initial report to the UNCRPD Committee in 2011, the UK government refers to several ways that it was involving disabled people in monitoring implementation of the Convention, including via the ‘Network of Networks’ and Equality 2025’. These mechanisms no longer exist and it is unclear whether their replacements replicate the extent and depth of involvement envisaged by the UNCRPD.

In March 2017 the statutory Disability Committee which forms part of the official governance of the Equality and Human Rights Commission will be replaced by ad hoc advisory group.

¹⁴⁹ Source: <https://www.equalityhumanrights.com/en/legal-casework/our-legal-work-action>

¹⁵⁰ The Enterprise and Regulatory Reform Act 2013 removed the duties and powers of the EHRC to promote good relations and to arrange conciliation. It also amended the Commission’s duties to report on progress towards equality and human rights.

Recommendations

We recommend that the Committee call upon the UK Government to:

- Update and expand upon its response to the OHCHR survey Human rights of persons with disabilities: national frameworks for the promotion and protection of the rights of persons with disabilities, explaining how it is ensuring an effective approach to national implementation and monitoring across the UK, including its approach to coordinating implementation of the Convention across Whitehall, the devolved administrations, public authorities and other sectors, the framework required under Article 33.2 and its efforts to support the involvement of disabled person's organisations in monitoring.

3. Annex – powers devolved to the National Assembly for Wales

Schedule 7 to the Government of Wales Act 2006 defines the scope of the Assembly's legislative competence to make Assembly Acts, within areas where the Welsh Ministers exercise executive functions. Schedule 7 categorises the existing areas of policy responsibility devolved to the Welsh Government into 20 broad areas. These areas, known as 'subjects', are:

1. agriculture, fisheries, forestry and rural development
2. ancient monuments and historic buildings
3. culture
4. economic development
5. education and training
6. environment
7. fire and rescue services and promotion of fire safety
8. food
9. health and health services
10. highways and transport
11. housing
12. local government
13. National Assembly for Wales
14. public administration
15. social welfare
16. sport and recreation
17. tourism
18. town and country planning
19. water and flood defence

Welsh language

Any area not listed in Schedule 7 is non-devolved and would be matters on which Parliament would legislate. It should be borne in mind that Welsh Ministers exercise some executive competence in areas which are otherwise non-devolved.

3.1. Annex – Recommendations for Welsh Government

The Welsh Government should:

Article 4 – General Obligations

- Act on the recommendation of the Joint Parliamentary Committee on Human Rights which in 2012 proposed that: ‘the Government make a clear and unequivocal commitment to Parliament, equivalent to that which it has already given in relation to the UN Convention on the Rights of the Child, that they will give due consideration to the articles in the UN Disabilities Convention when making new policy and legislation, and in doing so will always consider relevant recommendations of the UN treaty monitoring bodies.’
- Conduct a systematic assessment of compliance with the CRPD, involving disabled people, and set out areas for action.
- Develop and implement protocols for the active involvement of disabled people, including at national and local level and across public and political life.

Article 8 – Awareness raising

- Match commitments to supporting anti-stigma campaigning in mental health with a commitment to initiatives with clear outcomes to tackle discriminatory attitudes and behavior in relation to disabled people more broadly. This should be rooted in evidence and developed with disabled people.

Article 9 – Accessibility

- Develop measures, including policy commitments, to increase the supply and availability of accessible housing.
- Redouble efforts to ensure the promotion and enforcement of accessibility law, regulations and standards, through use of levers including government procurement, resourcing of enforcement and embedding accessibility in inspection regimes in health, education etc.
- Remind local authorities of their obligations under the Equality Act 2010 to have due regard to equality between disabled and non-disabled people and the duty on public bodies in Wales to consult with disabled people in the context of planning and street design.
- Ensure that all new public transport infrastructure meets the highest standards of accessibility and universal design, including the strict enforcement of deadlines to replace non-compliant vehicles.
- Consider rolling the accessible information standard developed for the National Health Service out across public services.
- Develop and implement an Accessible Transport Framework and Action Plan for Wales, equivalent to plans developed or being developed in Scotland and England.

Article 10 – Right to life

- Institute new, fully independent and mandatory systems for investigating deaths of persons with mental health conditions or intellectual disabilities in the care of the State.
- Introduce an agreed, coherent set of published statistics which includes all information necessary to provide an overview of the number and features of the deaths of persons with mental health problems or learning disabilities in the care of State or State-funded facilities. This information would include characteristics such as age, gender, ethnicity

and location of death; and type of death, e.g. self-inflicted, restraint-related, neglect or from “natural causes”.

Article 13 – Access to Justice

- Address the lack of specialist advice services on legal rights for disabled people in Wales.

Article 15 – Freedom from torture, inhuman or degrading treatment or punishment

- Adopt an explicit commitment to move towards health services that are free of seclusion and restraint and to set measures for the reduction in the inappropriate use of medication.

Article 16 – Freedom from violence, exploitation and abuse

- Adopt comprehensive strategies aimed at preventing and reducing the incidence of disability-related harassment and hate crime, including through action to tackle prejudice and to close the gap between overall incidence of disability hate crime, reported and recorded incidents and convictions. In particular, it should actively support the development of third party reporting centres.
- Adopt strategies to increase the availability of accessible support for disabled women who have experienced violence.
- Close the gap in human rights protection faced by those funding their own care and support or whose care is arranged by public bodies other than local authorities.

Article 19 – Living independently and being included in the community

- Reflect upon and take action in relation to the findings and recommendations of the CRPD Committee’s Inquiry into the United Kingdom under Article 6 of the Optional Protocol to the Convention, published 7 November 2016.

- Consult on the merits of establishing a freestanding right to live independently and to be included in the community.
- Ensure that the revised Framework for Action on Independent Living in Wales requires local agencies to reflect national objectives within local plans, including equality schemes.

Article 23 – Respect for home and family

- Accelerate the development of community based supports for persons with learning disabilities and/or mental health problems sufficient to prevent their isolation and segregation from the community.
- Promote greater national consistency with respect to the actions of local authorities to balance the rights of parents with learning disabilities and/or mental health conditions with the best interests of their children, including through the provision of timely and appropriate support.
- Take targeted action to sustainably reduce the numbers of disabled children in alternative care settings.
- Ensure families with disabled children are able to access support sufficient to enjoy a good family life, including communication support.

Article 24 – Education

- Engage positively with the recommendation made by the Committee on the Rights of the Child to pursue a fully inclusive education system, whereby participation in mainstream schools is generally preferred over education in specialised institutions.
- Set out its aims and strategies to reduce the number of school exclusions of disabled pupils.
- Set targets and develop plans to reduce the educational attainment gap between disabled and non-disabled pupils and students at each level.

- Progress with plans to introduce and implement the proposed Additional Learning Needs and Education Tribunal (Wales) Bill.

Article 25 – Health

- Outline its actions to address health inequalities experienced by disabled people, including persons with learning disabilities and persons with mental health problems.

Article 27 – Work and employment

- Introduce levers to influence the behavior of employers, including mandatory reporting by large firms, use of procurement as a lever.
- Take action to address the significant pay gap between disabled and non-disabled people.
- Ensure that its proposed policy for increasing employability in Wales include specific measures to tackle barriers faced by disabled people in entering and progressing within the workforce including access to appropriate support and training.

Article 29 – Participation in political and public life

- Work with the National Assembly for Wales to collate disaggregated data concerning the participation of disabled people.
- Support the replenishment and relaunch of the Access to Elected Office Fund at the earliest opportunity to include election to the National Assembly for Wales.
- Implement the recommendation of the Electoral Commission to exempt reasonable expenses connected to disability from the cap on political party and candidate spending during elections.
- Set targets and implement strategies to drive up representation of disabled people among public appointees.