

## **Liverpool City Council Disabled Workers Group Launch January 2003**

### **Bert Massie**

I would like to start off by saying how pleased I am to be here today in the magnificent St George's Hall. The European Year of Disabled People has a very clear theme. It is to promote the rights of disabled people. I know it had been hoped that the Member of Parliament for Garston, Maria Eagle, would be able to join us here today. She is, of course, an extremely busy Minister and there are only so many hours in a day. Had she been able to be here I think she would have told us about the government's important proposals to reinforce the civil rights of disabled people.

I was particularly delighted that last week she was able to announce that the government would shortly introduce a draft Disability Bill. This was wonderful news and the DRC warmly welcomed it. The draft Bill will enable the government to implement its manifesto commitments to introduce a number of the recommendations of the Disability Rights Task Force. It represents a major step in providing the legislative base from which we can build an inclusive society for disabled people and everyone else.

I was also pleased last week to be present at the English launch of the European Year of Disabled People and to learn of the many projects to promote the Year and its aims that are being funded by the European Commission and by the Department for Work and Pensions under Maria's guidance. The Disability Rights Commission wants to see a society in which all disabled people can participate fully as equal citizens. It is a modest ambition

but one that will be difficult to achieve. However, difficult does not mean impossible. A start has been made.

The Chronically Sick and Disabled Person's Act 1970 was the first Act to say that buildings should be accessible to disabled people. The first legal challenge was here in Liverpool in 1971. Tesco supermarkets wanted to build a small supermarket on a site in Allerton Road that was occupied by a cinema that was accessible to disabled people. Tesco offered to build a new cinema on top of their store so local people would still have the facility. The organisation then known as The Liverpool Association for the Disabled argued that the new cinema would be inaccessible unless a lift was installed. Tesco agreed and offered to install a lift but the cinema's trade organisation, afraid disabled people would want access to all cinemas, disagreed and although they lost the first court case they won the appeal. To this day the cinema in Allerton Road remains inaccessible. The lesson was clear. There is a role for education and persuasion in helping to create an inclusive society but that strategy will only work if disabled people have rights enshrined in law and that the law is enforced.

Over the years we learned other lessons. A major one has been that there is such a thing as a disability community and it is only by working together that we can achieve progress. The Committee Against Restrictions Against Disabled People wrote the first significant report to highlight the structural discrimination that disabled people faced everyday of our lives. Insurance companies charged disabled people more even when there was no additional risk. Inaccessible buildings and transport systems meant those of us who are disabled could not use them. We were denied educational opportunities and as a consequence lost out on the job market. That was all twenty years ago. In the early 1980's disabled people formed organisations controlled by disabled people. We

learnt the importance of working together and created the disability movement that led to civil rights for disabled people.

During the 1980's legislation was passed requiring new buildings to be accessible. There were helpful developments in the field of transport and mobility. However, the most significant piece of legislation was the Disability Discrimination Act of 1995. It contained a number of loopholes but two of the major ones have since been blocked. In 2000 the Disability Rights Commission replaced the National Disability Council, which only had powers to advise the government. Last year the Special Educational Needs and Disability Act came into effect. Education is now covered by the DDA.

Next year important rights and obligations will be introduced. From October 2004 service providers will be required to make their services accessible to disabled people. The Act does not require the buildings to be made accessible because services can be provided in other ways. However, in most cases the most sensible approach will be to make the building accessible to all disabled people. The Liverpool City Council and disabled people in Liverpool should be thinking about these duties now. The DRC's web site contains a great deal of information. Read it and download it.

At the same time almost all employers will be brought into the employment provisions of the Act. The only significant exception will be the armed forces.

Businesses will be turning to disability groups for information and advice. Disabled people need to join together to ensure that the advice they give is appropriate and accurate. Businesses will not be required to do more than is reasonable. If those of us who are disabled make unreasonable demands we give those who would prefer to

do nothing an excuse to do just that. There is also a lesson here for local authorities.

Whilst any adaptations to buildings must be appropriate and safe, businesses do not need to have unnecessary obstacles placed in the way. One of the major banks was more than happy to make their branches accessible but was horrified when a local authority wanted to charge them rent for the part of the pavement over which the ramp would run. The local authority was not Liverpool, but it shows the sort of attitude which local authorities can adopt and which is wholly negative. I know Liverpool City Council works with disabled people and disability organisations. That must continue. There needs to be a close partnership to ensure that the European year does not become just a public relations opportunity but a platform on which we can build an inclusive future.

I think we should also use the year to explore other issues of concern to disabled people. Last week, Reginald Crew, who had Motor Neurone Disease, flew from Liverpool to Switzerland to end his life. It resulted in considerable press coverage, including in the Liverpool Echo. The general tone was to support Mr Crew and to suggest that there should be a similar right to die in the UK. This is an issue the DRC is considering. We have not reached a final opinion, but there are major misgivings about changing the current law. The reason is that we do not believe that sufficient safeguards can be built into law to protect disabled people from having our lives ended prematurely and inappropriately. Stories we hear from Holland and the United States suggest that people have been encouraged to die or not kept alive because of, for example, a history of mental illness.

An under laying assumption of much of the press comment on the Crew death is that he was so disabled that to prefer death was the rational option. Certainly we

must approach such issues with great compassion. However, I do grow concerned about hidden assumptions that disabled people must have such dreadful lives that our lives are not worth living. We must resist such interpretations of our lives.

For many of us who are disabled we should first be looking on how we can ensure that disabled people have the right to live. Many disabled people alive today have survived doctors placing do not resuscitate notices on their hospital notes. We have still to reach the stage in our development where the lives of disabled people are treated as having the same value as those of non-disabled people. We should use the European Year to press the message that it is not better to be dead than disabled. One of my fellow commissioners, Jane Campbell, made this point very strongly in a newspaper article recently. We must reinforce the message that disabled people's lives are not to be devalued or regarded as second-rate. That is why the Human Rights Act is so important to disabled people.

Finally, in wishing the people of Liverpool every success during the European year, I would like to issue two challenges to Liverpool and its people. In 2008 it hopes to be the European City of Culture. It has a strong claim but will disabled people be fully included in all the events as they were in Manchester during the Commonwealth Games last year? Will those mental health service users be included, or disabled people in Liverpool's ethnic minority communities. Can we make Liverpool a truly inclusive city?

My second challenge is this. In future, conference organisers will need to ensure their conferences are accessible to disabled people. Yet those seeking accessible venues with accessible accommodation search long and hard for such venues. There is a huge business

opportunity for the city that decides to make itself a conference city that has all the facilities conference organisers need, including for disabled people. As Liverpool considers building a fourth grace and new hotels and other facilities, will the city look far enough into the future to create a truly accessible city?

If Liverpool meets both those challenges it will assist in the regeneration of the city and will also mean that you have used the European Year of Disabled People to build a better future for all its citizens.

Bert Massie  
Jan 2003

Keywords: Disabled people; Disability Rights; Liverpool

## Acceptance of Duncan Medal from the Duncan Society March 2003

Bert Massie

I am pleased and honoured to be here this evening to accept the Duncan Medal and to have the opportunity to reflect on the work of Henry Duncan and whether he has lessons to teach us today. It is also a particular pleasure for me to be back in Liverpool. Like Henry Duncan, I was born in this city so I have long been aware that Dr Duncan made a significant contribution to Liverpool in the 19th century and having a city centre pub named after him was perhaps the least of his achievements, although an admirable one nonetheless.

In his joint roles as a physician and a lecturer in Jurisprudence at the School of Medicine he was largely responsible for the passing of the Liverpool Sanitary Act of 1846. This followed his own report to the Council in 1844 in which he showed that "the population of Liverpool Parish amounted to 223,003 people, of whom 160,000 may be estimated to belong to the working classes, and of these it is well-known that a large proportion inhabited courts and cellars." This was about the same time as half a million people were pouring into Liverpool to escape the potato famine in Ireland. Some were in transit; many remained. Perhaps one of the ugliest scars on our history is how little England did to support the starving people of Ireland, especially as both countries were then part of the United Kingdom. Part of the reason is significant. This was in the day laissez-faire capitalism. Adam Smith had published *The Wealth of Nations* in 1776. The prevailing view was that the poor were poor because they were lazy or lacked moral fibre.

What Duncan saw, with a clarity that was unusual at the time, was that people did not live in poverty by choice.

Only through the intervention of central and local government could people be helped out of their poverty. Liverpool in the mid 19th century was the second city of the Empire, even though it did not achieve city status until later in the century. In the 1850's the great Liverpool buildings of St George's Hall, the Liverpool Museum and the William Brown Street Library were built: a huge divide between the rich and the poor of Liverpool. In 1851 Duncan wrote that the poor tried to disguise the extent of their poverty so they would not be forced to move from their overcrowded hovels. Duncan saw that individuals could only do so much for themselves. To achieve more, the State had to provide the supporting structures. So he created the concept of public health that was to do far more to improve the health of people than any physician could achieve helping individuals. We are all in his debt.

150 years later his approach is more relevant than ever, particular so in the field of disability. The most sensible estimates put the number of disabled people in Britain at about 8.5 million. This includes people with physical, sensory or intellectual impairments and mental or emotional impairments. They all have one thing in common. They are likely to be subject to discrimination. The Disability Discrimination Act (DDA) 1995, despite its limitations, was designed to protect disabled people against discrimination. It took over 14 years between the first anti-discrimination bill being presented to Parliament and the DDA being passed. That long battle was necessary because of the view society had, and to some extent still has, about disabled people and disability.

Disabled people, like the poor, have always been part of our society. Collectively we are regarded in a range of ways. To some disability is something best avoided and by implication disabled people should also be avoided. The Victorians hid many disabled people in workhouses or asylums, although the works of Dickens and the recent

book by Peter Ackroyd, London: The Biography, illustrate that there were plenty of disabled people on the streets of London in the Victorian era. It is unlikely that Liverpool was different. Some see disability as being a gift or curse from God; others as a punishment for acts in a previous life. As a society our response over the years has been to see disability as a medical rather than a social condition. It is not difficult to see why this approach should be taken as, by its very nature, there is a medical aspect to most disabilities. The question we must then ask ourselves is what can medicine do to assist disabled people. Inevitably, there is no easy answer.

Since Duncan's day the advances in medical sciences have been almost beyond belief. We are able to prevent many impairments occurring while at the same time we generate additional impairments by saving the lives of people who would once have died prematurely. However, we also need to accept that, apart from maintaining our general health, the medical profession has relatively little to offer many disabled people. Very few blind people recover their vision. Deaf people do not acquire their hearing, although there have been some significant advances in recent years. People with learning disabilities do not acquire a higher IQ. There is, however, some success in treating people with a history of mental illness.

Some disabled people do seek cures and we should not condemn them for so doing. However, as the actor Christopher Reeve has discovered, it is often a long wait and might well prove to be in vain. What then is the way forward?

The first thing that we must recognise is that most of the difficulties disabled people face are as a consequence of the way in which we collectively choose to organise our society. Irrational prejudice dictates the actions of far too many people. Thoughtlessness also leads to

discrimination against disabled people. There is also the indirect discrimination that is so much a part of the lives of disabled people. If an hotel bans people with a learning disability it is obvious to all what is happening. If an hotel has a flight of steps at the front and no other form of access then it effectively bans disabled people who are unable to cope with the steps. Equally, a theatre that shows a play but fails to provide signing or subtitling is hardly accessible to deaf people. The task of the Disability Rights Commission is to eliminate discrimination against disabled people.

There are a number of ways in which we can try to achieve this but none of them will earn universal approval and I can fully understand why. Essentially, the DRC has a number of strategies. We believe that some discrimination is caused by ignorance. It is pointless making moral judgments about this. We must help overcome it. We have established a helpline which in the current year will receive about 100,000 calls; approximately a third of these will be from employers or service providers. Most queries can be met by our helpline staff through the provision of information or by sending appropriate literature. We do not use recorded messages and insist that all the helpline staff are highly trained.

We have a duty to assist people to overcome discriminatory behaviour. We have a team of caseworkers, some of whom are trained solicitors although that is not a requirement of the job. They investigate about 2500 cases of alleged discrimination each year. In many cases we can resolve the discrimination by reminding the discriminator of the law. We have, for example, been able to persuade a number of restaurants that they should admit guide dogs that accompany blind people. We have been able to get compensation for people without going near the

courts. In other cases we have been able to show that within the meaning of the Act discrimination did not take place.

If the discrimination relates to access to goods and services, the DRC also offers an independent conciliation service. This can be compared with the service offered in the employment field by ACAS. If conciliation fails the disabled person still has access to the law. The DRC initiates just over one legal case every week. We are particularly interested in test cases that would help a large number of disabled people as well as the individual who has sought our help.

The Disability Rights Commission Act 1999 imposes another duty on the DRC. It is to monitor the effectiveness of the DDA and to recommend to the government any changes in law, regulations or good practice that might be necessary. Our helpline, caseworkers and legal services, as well as assisting the individuals involved, also provide the DRC with an invaluable database. It enables us to make informed judgments on how effectively disabled people can assert their rights. In some cases we have been able to show that the DDA is stronger than some of its critics initially thought. Equally, it is apparent that there are major weaknesses with the legislation. There are particular problems concerning the definition of disabled people. Even though public transport is increasingly accessible, it is still perfectly lawful for disabled people to be refused access to it. The 80% or so of employers who employ fewer than 15 people are exempt from the employment provisions of the Act.

I am pleased that the government has announced that it will introduce measures to extend the employment provisions of the DDA to all employers with the exception of the Armed Forces. In January of this year the

Government announced that it plans to publish a draft Disability Bill that will bring transport services more fully into the provisions of the DDA and to introduce other measures. This was, of course, a most welcome and encouraging announcement.

The DRC therefore has a dual approach: we assist individuals, employers and service providers to understand the legislation; we provide a casework and legal service but we must also look to a wider agenda of how we can move society to a point where disabled people's rights are automatically recognised and implemented.

But we do face a dilemma. Regardless of how much of our resources, which are inevitably finite, we allocate to representing individuals we can never do more than scratch the surface. Yet many disabled people regard our representative role as our most important. They argue, with justification, that rights are of limited value if they cannot be enforced and sometimes only legal action will result in enforcement. Most disabled people live on state benefits and are therefore unable to meet hefty legal bills. They look to the DRC to meet the costs of difficult cases or where, without our intervention, an injustice would not be rectified.

However, I am also urged to concentrate more on promoting "inclusion". Indeed, recent government documents see equality as largely about inclusion. This inevitably raises the question of what precisely does inclusion mean. When I first became involved in disability politics we used to talk about integration: we wanted disabled people to be integrated into mainstream society. I find myself wondering whether the word "integration" has simply metamorphosed into "inclusion" or do the words mean something different. I also find myself wondering whether we are all to be included to the same extent.

With such vague concepts it is possible that Orwell's dictatorial pig Napoleon will return to haunt us and some will be more included than others.

A cynic might argue that "inclusion" is an easy word for governments to use because it is difficult to measure. How do we know whether we have an inclusive society? If it is difficult to measure inclusion, then it is equally difficult to be seen to have failed to achieve it. There is no adequate measuring tool that could give us a clear picture. In the context of disabled people, how might an inclusive society look?

Disability restricts choice. Disabled people do not have the same range of choices as non-disabled people even when we take into account that nobody has all the choices in life they would like to have. In an inclusive society disabled people would enjoy all the same choices and opportunities as other members of the population enjoy. It would be possible for a wheelchair user have a train journey without being required to give 48 hours notice. Does inclusion mean that disabled people will be able to do things as spontaneously as non-disabled people? For many disabled people spontaneity is a pipedream because there are insufficient facilities to meet our needs. In some parts of the country disabled people need to give at least a week's notice to use Dial-a-Ride services. In January I was talking to the mother of an adult man with a severe learning disability. She was booking a holiday to take place in October. She informed me that October was the nearest date on which she could get respite care for her son. So much for spontaneity!

In a truly inclusive society disabled people would have their fair share of the available jobs and places in education. Disabled people still face discrimination in the labour market and are under represented in further and

higher education. I expect that during the next decade as the DDA becomes fully implemented this will change.

Facilities designed for disabled people need to be protected from those thoughtless or uncaring non-disabled people who abuse them. Over Christmas I was talking to an elderly lady whom I have known for some years. She is intelligent, sensitive and caring. She has kept herself fit with hardly any significant illness throughout her life. She has also been recently diagnosed as having a malignant cancer and has already become disabled. She is unable to walk far and has rightly been given a disabled persons blue parking badge. She was commenting to me that she was shocked at how many non-disabled people parked in bays reserved for disabled motorists. She was also surprised at how often toilets designed for disabled people were occupied for long periods by non-disabled people. Throughout a long life as a non-disabled person she had simply not noticed these things. I suspect many intelligent caring non-disabled people drift through life wearing similar blinkers.

I know disabled people who no longer visit supermarkets because the wider parking bays which allow them to get their wheelchairs out of cars are occupied by people who are too idle to park further away. For many disabled people this lack of consideration for our needs, and the consequential marginalisation, is part of our every day lives. We cannot solve the problems alone. Precise measures are needed and vague terms like inclusion can result in vague thinking.

A consequence of many impairments is a weak bladder: when people need to go, they need to go. In any one building there is often only one toilet designed for the use of disabled people. If that is occupied for a long period there is no option but to wait, and on been occasions disabled people have soiled themselves because the wait

was too long. As a consequence, people's confidence in going out is destroyed. Of course, one way of overcoming these difficulties would be to require all toilets to be designed to meet the needs of disabled people and for all car park spaces to be of larger dimensions. Now, that would be inclusive but I don't see it happening.

We are still a long way from a situation where the public do not have an irrational fear that people who are mental health service users will attack them. People with epilepsy have long recognised the fear that others have in case the person with epilepsy has a seizure. Fear can result in exclusion.

From October 2004 service providers must ensure that their services are accessible to disabled people. In many cases this will involve making the buildings physically accessible. However, providing the service is accessible then physical access to the building is not a requirement of law. All new housing must have access features incorporated. Given the percentage of the housing stock that is renewed each year, I estimate that it will be at least 50 years before most housing in this country is accessible. Predictably and sadly the house building industry fought like tigers to prevent laws requiring them to incorporate access features. This underlines another lesson. It is this. Educating and persuading people to meet the needs of disabled people does not work unless there is a requirement in law and the law can be and is enforced.

However, an inclusive society is and must be an objective worth striving to achieve. When we get there, I envisage a society in which as human beings we value each other as individuals and celebrate the diversity, colour and variety that every new person we meet brings to our lives. We will judge people on their actions and not their appearance. We will refrain from moral judgements of

others based on an ill-conceived and inaccurate vision of our own perfection. We will have designed our society so it does not impose restrictions on people. In the case of disabled people, our needs will be met and incorporated in social systems and structures from their inception. The attitudinal changes will not just happen. They will follow the structural changes.

The Disability Rights Commission is formulating a picture of an inclusive society. The DRC will shortly publish a review of the current legislation and have recommended changes that are needed. I hope that when the government has had the opportunity to fully consider our proposals they will respond positively.

Inclusion will not be achieved by merely amending the structures of the equality industry. However, the right types of change to the current equality commissions could produce positive results. Any new Equality Commission, drawing together the current commissions and also extending its brief to new groups of people, needs to have a strong vision of an inclusive society. It needs to be able to bring different groups together. It must also respect diversity. The needs of disabled people are still not understood. There must be a strand within the proposed commission that is devoted to the needs of disabled people and which is controlled by disabled people who should have executive powers. And, of course, such a commission could only succeed if strong and appropriate equality laws were in place. To establish such a commission without the necessary legal structures would be like creating not just a paper tiger but a rice paper tiger that would be powerless against even the smallest drop of opposition.

The government has published proposals to merge the three current equality commissions that cover race, gender and disability and to add three new strands of age,

belief systems and sexual orientation. In our response the DRC has stated that we believe none of the government's proposed models would work. Instead we have suggested an overarching commission with six strands within it covering each of the six areas. All of the core administrative functions could be merged and main policy determined by the main commission but each strand would control the enforcement and policy agenda particular to the people it serves. It is a hybrid that would ensure that those who experience discrimination set the agenda whilst working in harmony with other strands.

The DRC wants to contribute constructively to the debate on a Single Equality Body on its structure, shape and function and is leading the debate with our radical plan that has the real potential to make Britain an equal society for all its citizens.

However, for it to be credible, the Single Equality Body must be understandable to both the public at large and industry and deliver for the individual strands that will make it up.

It seems clear to me that the greatest spur to the inclusion of disabled people within our society is our physical presence amongst you. That can only be achieved when the discriminatory barriers are destroyed. As Dr Duncan discovered, even well motivated individuals cannot move forward unless local and national government create the right conditions. Parliament has done a great deal to ease the path of disabled people. I hope it will now finish the job.

In the meantime, the DRC must continue to press for an inclusive society but recognise that J.S.Mills utilitarianism might not be the most helpful approach because we must protect minorities and the granting of rights will inevitably create obligations on other sections of the community.

Unless, of course, we take the informed view of Henry Duncan which is to recognise that a society which fails to meet the needs of all its citizens will ultimately fail as a society. In that case the needs of the few are also the needs of the many. Across 150 years that message remains strong and powerful.

The Duncan Society reminds us that in public health and other areas a wider more visionary approach assists more individuals more effectively than individual casework. Equally, society comprises individuals and if we refuse to assist them individually, we demean ourselves as well as them. That is certainly the dual approach that the DRC will continue to follow.

Finally, I should thank you for the honour of awarding to me the Duncan Medal in this year 2003, the European Year of Disabled People.

Bert Massie  
March 2003

Keywords: Disabled people; Inclusion; Poverty; Social Exclusion

## Ford of Europe Chairmans Leadership Awards for Diversity 2002 March 2003

Bert Massie

I should like to start by saying how pleased and honoured I am to be here today on such a special occasion for Ford and the company's employees. 2003 is the European Year of Disabled People and disabled people have decided that the theme of the year should be of the promotion of disabled people's rights. However, the rights of disabled people are but one strand of a wider tapestry of diversity and inclusion across all of Europe. Every European country contains a wide variety of people with different backgrounds and origins, with different belief systems, different sexual orientations, people of different ages and, of course, different levels of physical, emotional or intellectual prowess or impairment. Celebrating that diversity can enrich all of our lives and that is what the Ford Diversity Awards seeks to capture. In my remarks to you today I shall concentrate on disability and disabled people but many of the themes are universal.

The goal of the Disability Rights Commission is a society where all disabled people can participate fully as equal citizens. "All disabled people" includes people with all forms of impairment as well as disabled people of all ages, from the different ethnic and religious communities, men and women, and people with differing sexual orientations. We are therefore eager to work with organisations that represent people who face discrimination for reasons other than disability. There are many practical ways of addressing diversity, with practical benefits for us all.

Perhaps I should say something about myself. I have spent nearly all of my professional life fighting to improve the lives of disabled people. My starting point is that very few disabled people will be cured and, indeed, many do not seek cures. However skilled medical personnel might be, they cannot perform miracles. Medical science, despite its wonders, has its limits. How then do we ensure that disabled people enjoy full and fruitful lives? The answer is to analyse the barriers, which prevent disabled people from playing a full role in the community. Most of those barriers are created by people, which mean that people can also destroy them. I am one of an army of disabled people and those without impairments who fight to destroy those barriers. We need to change society and not try to change disabled people. In 1978 I joined the staff of the Royal Association for Disability and Rehabilitation based in London. In 1990 I became its Chief Executive. In January 2000 I became the Chairman of the newly created Disability Rights Commission.

The DRC is a statutory body created by the British Parliament. Its role is to eliminate discrimination against disabled people. In Britain we have strong laws forbidding discrimination against disabled people in the areas of employment, education, access to goods and services and to transport services. Of course, laws are of no use if they cannot be enforced, so the DRC has powers to ensure they are enforced. The DRC has a helpline that is receiving about 100,000 calls a year. On most occasions it is relatively simple to give the caller the information and advice they require immediately. About one-third of the calls are from employers or businesses that serve the public. An important part of our role is to help businesses to understand and follow what is in some respects a very complicated law.

During the last three years we have investigated about 7,500 cases of alleged discrimination. In some cases we

have been able to show that discrimination had not taken place. However, if we find that discrimination has taken place we can assist people through our conciliation service or, if necessary, we can support them in taking legal action. In such cases of the DRC normally meets the legal expenses of the disabled person who has experienced discrimination. So far, we have used our legal powers in 150 cases.

The DRC also has powers to investigate companies that appear to discriminate against disabled people. However, it is always better if we can work in co-operation with companies are so they can introduce policies to ensure discrimination does not take place at all. Under British law the employer is responsible for the actions of each and every employee, so it is important that policies are not just decided in far off boardrooms but reach every corner of every factory, every warehouse and every office.

Although I have spoken so far from a British perspective, changes in European law will ensure that such policies will soon spread across all those countries that are members of the European Union. A new European law will require all employers throughout Europe to introduce policies to ensure that they do not discriminate against people on any of the following grounds; age, gender, race, religious belief, sexual orientation and, of course, disability. It will be unlawful to have discriminatory recruitment policies. Employers will need to ensure that all their workers have equal opportunities to gain promotion and that they do not face unjustifiable dismissal. This will create a major challenge for many employers but one that with a little thought they should be capable of meeting. Since it started, the DRC has given a high priority to working with employers. Co-operative working produces better appreciation in all the parties involved of what the issues, the problems and the solutions are. This enables us to

move forward together without the need to use the courts. We all gain.

One approach, which employers could take, is to obey the law for no other reason than they have to. I think that approach would be a mistake. Europe it is changing and employers that fail to embrace diversity will soon find that their businesses are adversely affected. It was not too many years ago when older people were a relatively small part of the total population and that younger people were the majority. That is changing. Europe's population is greying. By 2025 the percentage of the EU population aged over 65 will increase from 15.4% to 22.4%. People are also living much longer. During the middle part of the 20th century most people died in their 60s. Today people expect to survive until the 70s or 80s. At the beginning of the last century there was a high birth rate. That has now dropped so much that, for example, in Italy the fertility rate is 1.2 children per woman. Despite the arrival of about 70,000 immigrants each year, Italy's population is falling. Those who are today middle-aged will within 20 years be elderly. One implication of all this is that employers will have difficulty finding people to do the jobs that need doing. They will need to welcome people who are disabled, or are immigrants, or who are elderly and are still willing and able to work. Diversity in the workforce will be essential for survival.

I also believe it would be a mistake to place our faith in technology as a means of replacing people. History shows us that new technology can displace people and force them into new industries or services but ultimately people who can work will still be needed in any economy if it is to prosper.

The changing profile of Europe's population creates other challenges for companies such as Ford. There is little point in making cars and commercial vehicles if nobody

buys them. If people are to spend their hard earned money on buying a car it is important that it is ergonomically designed to meet their needs. The hyper fit 24 -year-old male will be a small minority compared to the elderly woman who has a degree of arthritis. As disabled person, I was delighted when motor manufacturers correctly identified that in future there would be more female motorists. One response was to make power-assisted steering on cars much more widely available. That was enormously helpful for those of us who have weak arms. There was no way in which we could make our arms more powerful but power steering solves the problem. Design in the future will need to be much more sensitive to the needs of the whole population and I have no doubt that will need to be better designed for everybody.

I hope I have illustrated that creating an inclusive workforce and work environment is not merely a matter of morality or following laws. It makes good business sense and is therefore also good for a company's shareholders. It has to start at the top and Ford's commitment to this is illustrated by the presence here today of Martin Leach, in his role as the President and Chief Operating Officer of Ford of Europe. Middle managers cannot be expected to implement inclusive policies if they are not supported from the very top of the organisation. Once they have determined the policy the Board need to take responsibility for ensuring it is implemented and that means supporting the staff responsible for its implementation. Perhaps the success of managers in implement in such policies should be part of the criteria on which they are assessed as managers.

Diversity and inclusion is not something that is just about other people. It concerns each and every one of us. As we pass through life each of us will acquire characteristics that could lead to us being discriminated against. If we live long enough we will, by definition, become older and

could therefore encounter discrimination on account of age. If we survive until the age of 85, 9 out of ten of us will have a significant impairment or disability. Even at whatever age we happen to be now, how many of us have the fitness of an Olympic athlete? Disability is nothing special it will be part of all our lives. Stress and mental illness could affect any of us tomorrow. We each have our sexual preferences and they might change during our lives. Should we be subject to discrimination as a consequence? Of course not. So, by promoting an inclusive workplace we protect not only our colleagues but also ultimately ourselves.

It is part of human nature that we like to be praised when we have behaved in an admirable way. The Award Winners today are special people who have turned abstract policy into action and done so with great skill. This award ceremony today, bringing together Ford people from across Europe, is just one way in which the company can show its approval of what you, the people who make Ford what is, are doing. It reinforces a positive message.

However, events such as this can only ever be a small tip of a large iceberg. There needs to be constant monitoring of how diversity policies are operating in practice. It is also important to ensure that people both within and outside the company know of the policies. Many people who have faced discrimination during their lives assume that they will also face discrimination when they apply for jobs. Ford needs to project itself as a company that will judge all applicants on their merits. Everybody will have an equal chance and that the company will not tolerate discrimination. Once the policy is known in the wider world it positions Ford as a responsible and socially conscious company and one for which people are proud to work.

The European Year of Disabled People is particularly important to those of us who are disabled. Many disabled people experience discrimination every day of our lives. It is not simply a case of people being horrid because that is the least of our problems. It is that we cannot get into buildings which are inaccessible, blind people do not have access to information in a format they can read. Deaf people are denied access to television and radio programmes or even to emergency announcements in railway stations. People with learning disabilities are denied information in easy reader versions that they can understand. People who are mentally ill or who have a history of mental illness face prejudice and fear which in turn limits their life opportunities. The European Year should help to change those negative attitudes and reinforce the position that it is society that disables us.

Equally important, the Year should not be seen as a one-off event that we can forget about on 31 December 2003. It is one stage in a process that began decades ago to produce a European society in which each disabled person is valued as an individual and treated as a full citizen with full rights. Increasingly, within the European Union these rights will be enshrined in law. I suspect that another development will be to follow the example of Great Britain and the Republic of Ireland to ensure that machinery is a place in so disabled people can exercise their rights under the law. I understand that proposals for enforcement mechanisms are already being considered in the Netherlands. However, the law can only go so far. The real success will be achieved when we no longer need law because people do the right thing automatically.

That of course depends on individuals. People like each of you and me. Governments and management can set of the direction but individuals commit discrimination. Every act of discrimination weakens our society: everyone who refuses to tolerate discrimination strengthens it. We all

have our role to play. Each individual act is part of a larger picture in much the same way as the Great Wall of China consists of individual bricks. Each brick might seem insignificant but collectively they create one of the few human artefacts that can be seen from outer space. I hope therefore that whoever you are, and in whatever country you live, you will never underestimate or undervalued the contribution each of you can make as individuals to creating a truly inclusive society. There is still a great deal to do but your presence here today suggests to me that you are playing your part and I wish you every possible success in continuing to do so.

Thank you for your attention.

Bert Massie  
March 2003

Keywords: Disabled people; Disability rights; Employment; Europe

## **Doncaster BME Conference March 2003**

### **Bert Massie**

1. I should like to begin by thanking the organisers for inviting the Disability Rights Commission to be represented at this event. It is a great pleasure to be here with you. It is good to see so many friends here today. I would like to talk about The Disability Rights Commission and the Yorkshire Partnership Project.

2. Before I say a few words about the Disability Rights Commission. It is worth reminding ourselves how the DRC came to be established at all. The starting point is that even today very many disabled people in Great Britain have a rotten time.

3. Discrimination is a daily fact of life for those of us who are disabled. Disabled people are seven times as likely as non-disabled people to be unemployed. Most disabled people have only state benefits as their main source of income. Public transport is a nightmare for most people but for many disabled people it is doubly so, assuming they can use it at all.

4. The above issues also affect disabled people from the Black and Minority Ethnic community but often more so because of the cultural and linguistic barriers faced by them.

5. Disabled people from Black and Minority Ethnic communities share the same difficulties regarding asserting their rights as anyone else, but as a result of inflexible and inappropriate service provision, they encounter additional barriers because of language, isolation, attitudes and stereotypes, as well as having to deal with service providers who traditionally exhibit a very

limited understanding or awareness of the complex cultural, religious and community relationships that disabled people encounter.

6. The DRC is a newly established organisation. We opened our doors for business only three years ago. The Commission for Racial Equality and the Equal Opportunities Commission started nearly 30 years ago. Doncaster has done well in attracting speakers from the DRC, this is the 3rd time in the three years we have attended in a event in Doncaster!

7. The framework under which the DRC operates looks at the many areas of life where disabled people face exclusion and discrimination for example in Education, HealthCare, Transport and Employment and many others areas.

8. We are ever eager to put ourselves on the map and to raise awareness among disabled people from Black and Minority Ethnic backgrounds, employers, service providers and the general public of who we are and what we do.

9. This is a very important part of our day-to-day work. Disabled people need to know what their rights are and employers and others need to know what their duties are. Here I have to stress that there are many service providers with a Black and Minority Ethnic background, who need to be aware of their duties and obligations are under the Disability Discrimination Act 1995. The Commission has been working in partnership with many service providers from Black and Minority Ethnic Communities. This is proving to be a successful approach and we will continue this with it.

10. That way lies empowerment for disabled people and a greater sense of social responsibility among those on whom the various duties fall. It is not “a them and us” approach but a partnership experience. There are around

8.5m disabled people in Britain. Around one sixth of the population.

11. Our rights to inclusion, to participate in activities which non-disabled people take for granted, must be met otherwise we shall forever remain a divided society of haves and have nots; the included and excluded.

12. Our experience is that once the rights and duties are properly understood, people are much more willing to follow them.

13. That is why we have a national advice Helpline which takes around 10,000 calls per year. It fills a much-needed gap in the provision of information about those rights and duties.

14. That is why our mission statement says that we see it change in society by advice, conciliation but also legal enforcement.

15. We use our legal powers with great care. We do not rush to court as we can often achieve good results through other forms of intervention but when we do need to use our legal powers we do not hesitate to do so.

16. For those of you not familiar with the work DRC I'd like to spend just a little time describing the organisation. The DRC is a statutory body, set up by the Disability Rights Commission Act 1999.

17. There are 15 Commissioners appointed by the Secretary of State for Work and Pensions. 10 of the Commissioners have a disability. Two from Black and Minority Ethnic communities.

18. We have four offices – in London, Manchester, Edinburgh and Cardiff. The DRC employs 180 staff and has a budget of almost £14m provided entirely by the

Secretary of State. The Commission has wide-ranging and extensive duties. These are

firstly to work towards the elimination of discrimination against disabled people, secondly to promote the equalisation of opportunities for disabled people, thirdly to encourage good practice and, finally to keep under review the working of the Disability Discrimination Act 1995 and to advise Ministers of any changes we consider necessary.

19. The Commission can take legal action in its own right or by funding proceedings on behalf of individuals. Unfortunately, our Helpline was unable to supply any statistics about the number of those from Black and Minority Ethnic background who have contacted us for advice but it may interest you that we are now in the process of monitoring figures from our help line from Ethnic Minority background.

20. Recent commissioned DRC research makes it clear that people from Black and Minority Ethnic groups are not receiving appropriate information and advice from organisations.

21. There are also profound language and cultural barriers within the Black and Minority Ethnic population. The traditional approach has assumed that it is sufficient to produce information in other languages or provide a translation service to overcome these barriers. This vastly understates the issue of "access" in its widest sense. The DRC produces an array of "accessible" information yet the DRC experience is that few people request it.

22. Those agencies and organisations involved in service provision need to take "Ownership" and make themselves accountable for the existing situation and develop

partnerships that deliver meaningful and progressive benefits at community grassroots level.

23. We want to address this issue with the partnership work and our Yorkshire Forward Partnership and Capacity Building Project.

24. We have decided on the Yorkshire region, because it has a heavy concentration of ethnicity and a diverse community. There are notable numbers of disabled people and their carers who remain isolated and in poverty due partly to a lack of information regarding their rights and entitlements. It is to be anticipated that these people are also facing discrimination and some of this will be specific to race issues.

25. Research also shows that people from Black and Minority Ethnic struggle to get the information they need and want. Clearly we need to develop best practice to enable people to understand and exercise their rights.

26. For example, we have been working with the Council of Tribunals to produce a guide for Tribunal Members. This guide states that Tribunal Members should take into account the cultural and religious needs of the applicants. We are hopeful this will make great difference for disabled people from Black and Minority Ethnic Communities to assert and exercise their rights through tribunals.

27. Piloting in the Yorkshire Forward Region provides an opportunity to evaluate appropriate access to and integration of Black and Minority Ethnic groups, who are likely to continue to be marginalised unless the DRC takes appropriate action to ensure full inclusion. Thus, the Regional Partnership Manager and the Partnership Officer will be working closely with those umbrella groups of black and minority ethnic organisations who can cascade information down to their own group membership. Building personal contacts and raising confidence are fundamental

steps towards successful integration and should result in easier access to DRC services.

28. The Commission has given our staff the job of working amongst local organisations in Yorkshire and the Humberside and with the community representatives at grassroots to find out how best disabled people can be informed about their rights and about how they can exercise those rights in practice.

29. The DRC will be working with accredited providers in the Region with their own local networks. This will provide a local intelligence to inform the future development of DRC services and policies.

30. The Pilot Project will illustrate best practice in reaching out to and informing disabled black and ethnic minority members about their rights and how to exercise them, locally or through the DRC.

31. We want to end the myths and stereotyping in health care needs of black and ethnic minority disabled people for example;

Asian families are large and they prefer to look after their own,  
Mental health problems are the same in every culture,  
No one is asking for a service, so there isn't need for it,  
They've lived here so long, they must understand English.

32. We want disability rights and access to feature strongly in the training and qualifications of professionals.

33. At the same time, we will not be closing our national doors to those who would rather use the DRC's central

service – we want to offer the best service, the most appropriate service and a choice of quality services.

34. This is an exciting and potentially very beneficial piece of work for both the DRC and the local organisations (and, therefore their members and users) with whom we will be working.

35. At the present time the Disability Discrimination Act can be used to challenge disability discrimination in relation to three main areas: first, employment rights; second, the provision of goods, facilities and services and thirdly education.

36. It is part of the ethos of the Disability Rights Commission to encourage good practice. Our approach to any complaint relating to the failure of a service provision is twofold – firstly to try to resolve the matter for the individual concerned but secondly to suggest the service provider should introduce good policies, practices and procedures for those with disabilities, which should improve the quality of their life and help to avoid further problems in the future.

37. I would like to say the few words about a major debate which is how currently taking place within government and organisations seeking a more inclusive society. The government has published proposals to merge the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission to form a Single Equality Body. In addition to dealing with issues relating to race, gender and the disability it would also cover age, sexual orientation, and belief systems.

38. The DRC does not believe that any of the options suggested by the government would produce an efficient and effective organisation. We have therefore proposed a radical blueprint for the merged commission that we believe really could make a major impact in promoting an

inclusive society. Whilst we recognise that people do enjoy multiple identities, and in some cases people face discrimination on grounds of race and the disability, our own evidence suggests that multiple discrimination is not as widespread as sometimes asserted. For example, of 7,500 cases we have investigated only 45 could be defined as multiple discrimination. We therefore need the new organisation to have a structure which enables it to meet the needs of disabled people while simultaneously having the capacity to cope with multiple discrimination, or indeed any other type of discrimination.

39. We believe there should be a Single Equality Act of Parliament to ensure that all the groups of people covered by the proposed SEB enjoyed equal rights with each other. We need to level upwards not downwards. Within the commission there should be stands representing each of the groups. There would, for example, be a strand dealing with race issues and one dealing with disability issues. They would have their own agendas but would work together on joint agendas. It is important that disabled people control the disability strand and that they have executive powers. Disabled people have fought for many years to win the right to set our own agendas and not be told what is good for us by people who have no personal experience of disability. I have no doubt they mean well. Equally, I have no doubt their lack of personal knowledge of disability would, as in the past, lead to have non-disabled people making the wrong decisions about disabled people and our lives. At the DRC, we believe that one of our strengths has been the lead and authority given to us by our disabled commissioners working with non-disabled commissioners and staff. It makes a powerful combination.

40. The DRC will play an active and positive role in seeking to ensure that the proposed SEB will be a body that serves all people including those who are disabled.

We are fully committed to the debate and a positive outcome.

41. Many disabled people and others have fought long and hard for the establishment of Disability Rights Commission.

42. I and my fellow commissioners and commission staff are determined to live up to their hopes and expectations, and give them a Commission of which they will be proud.

43. The commission has a challenging but hugely exciting task. In tackling the task and working in partnership, we shall achieve it.

44. We want to hear from you, that is any of you not just those who are involved “officially” in disability, but employers, carers, service providers etc etc! We have been working closely with Lord Ahmed of Rotherham and other members of the Ethnic Minority Communities on many issues in the last three years, their support and guidance has been most helpful for which I am very grateful.

45. There is an opportunity now for you to influence what we do. We welcome views from you on how we can work together as well as your ideas and feedback on our plans.

46. You can contact us for advice and information through our free Helpline on 08457 622633, textphone 08457 622644. We have translation line in various community languages. Free leaflets on the work of the DRC are available in a variety of formats and languages.

47. We want you to respond to our consultations.

48. We always welcome ideas and feedback. You can write to us at DRC, 2nd Floor, Arndale House, Manchester M4 3AQ.

49. Please join our mailing list to receive up to date information on our work and disability issues.

50. Use our website, [www.drc-gb.org](http://www.drc-gb.org).

51. I like thank you for your time and I hope I have been able to give you at least a little insight into the Disability Rights Commission.

52. Before I go I would like to say:

We do not underestimate the scale of the task ahead, Our aim is to end discrimination against disabled people and create a society in which, disabled people can fulfil their potential as equal citizens. In short we will create change through advice, conciliation and ultimately legal enforcement. We want to change attitudes towards disabled people. It will be a challenge to achieve all of our goals. We will not achieve our goal unless people like you work with us and help us. We cannot do it alone. There are many people here in this audience who have knowledge and experience, and as I said previously we need you!

53. The Commission wants to work with the Black and Minority Ethnic Communities and with this genuine partnership approach we together can achieve a society were disabled people are treated as equal citizens.

Thank you

Keywords: Disabled people; Black and minority ethnic communities

## **Can Civil Rights for Disabled People Create an Inclusive Workforce**

**Bert Massie**

Can Civil Rights for Disabled People Create an Inclusive Workforce?

I would like to start by thanking Remploy and Rehabilitation International for inviting me to speak to you today.

The Disability Rights Commission has the responsibility of eliminating discrimination against disabled people in Great Britain. The DRC was created by the British Parliament and came into being in April 2000. It has 15 commissioners of whom 11 are disabled people. Our Chief Executive leads a staff team of 180 people. Our helpline, based here in Stratford-upon-Avon, received just under 100,000 calls last year. About a third of these were from employers or companies providing services to the public. About 1800 seemed to indicate that some discrimination against disabled people might have taken place and, as a consequence, we examined them more closely.

In many cases the fact that the DRC is interested in a case produces action to resolve the discrimination. On other occasions we have needed to remind employers and service providers of the law. We have found conciliation to be an effective means of intervention and have established an independent conciliation service for people experiencing difficulty in gaining access to goods and services or to education services. There is a separate service for employment disputes.

The DRC also has legal powers and last year brought over 50 cases before the courts and employment tribunals. We have been able to clarify the law, enable disabled people to obtain justice and underlined the message that discrimination will not be tolerated. We have just launched a major investigation into the accessibility of websites.

There is not enough time today to enable me to explain the detail of the Disability Discrimination Act 1995. It defines disabled people, prohibits discrimination in the field of employment, access to goods and services, education, and, finally, enables the government to require public transport to be accessible. For obvious reasons, I intend today to concentrate on employment issues.

In essence, a disabled person is somebody with a physical, intellectual, sensory or emotional impairment that has an effect on their everyday lives and is likely to last for at least a year. Once somebody has been recognised as disabled under the DDA they are protected by the Act for the rest of their lives. For example, if a long-term mental health service user recovers they might still face discrimination and therefore need protection. There is no longer a register of disabled people and in asserting their rights under the act a person must first show that they are disabled.

The employment provisions of the DDA make it unlawful for an employer to discriminate against a disabled person when recruiting staff, implementing policies relating to promotion, or in dismissal. At the moment it only covers employers who employ 15 people or more and there are a number of exemptions, such as the uniform police and fire service. However, from October 2004 the only exemptions will be the armed forces. Every other employer will be covered.

So, in Great Britain we have strong civil rights laws protecting disabled people in the field on employment. With the exception of Malta, Britain is the only European country with a Commission controlled by disabled people that is reasonably resourced and has a statutory duty to protect the rights of disabled people. I think we should now ask whether civil rights legislation has been able to equalise the employment prospects of disabled people.

In Britain there is a trade union that is run by disabled people and has been in operation for more than 100 years. It is the National League of the Blind and Disabled. One of its former members, David Granger, wrote a number of poems that the union published posthumously. I would like to read you a few versus of one of them entitled "Just a Thought!"

"I may be Blind, but I can see  
The contempt employers have for me  
I may be deaf, but I can hear  
"A health and safety issue here"

Mental health, wheelchairs and depression  
Give employers one impression  
Got no use, and no ability  
All because of a disability

I want a job, a life, a chance,  
But I don't get a second glance  
I'm viewed as ill or incomplete  
All I need is a chance to compete."

There is a number of other versus giving the same message. They suggest that despite our laws we are still some way from achieving the levels of employment amongst disabled people which match those of the non disabled population.

Between 1944-1996 Britain had a law under which employers who employed more than 19 people were required to ensure that 3 percent of their workforce were registered as disabled. It seemed to work well enough in the 1950s but by the 1960s and 1970s it was clear that most companies simply ignored it because they knew that the government were extremely loath to enforce the law. Even if companies did obey the law, it required no more than for them to ensure that a percentage of the workforce were registered as disabled. Once that figure of just 3% had been reached a company was free to discriminate against individual disabled people as much as it wished. In other European countries such as Germany the quota could be avoided by paying a levy and many companies chose to do that.

The Disability Discrimination Act abolished the quota scheme and replaced it with individual civil rights for disabled people. Under the Act contravening a disabled person's civil rights is not a criminal offence but a civil offence. In Britain that means the government does not initiate prosecutions but the person who has experienced the discrimination must bring a legal case themselves. Clearly, many cannot afford to do so and although the DRC does sponsor a number of legal cases there is inevitably a limit to how many we can fund. Access to the law is not always easy.

In countries such as the United States, Australia and Britain, which have laws granting civil rights to disabled people, unemployment amongst disabled people remains frustratingly high. In Britain disabled people are six times more likely than non-disabled people to be unemployed. About one million disabled people in receipt of Incapacity Benefit say they would like to work. Some employers say they would like to employ disabled people but they cannot find them. What then, is going wrong?

In the experience of the DRC, it is much more difficult to prove that an employer has discriminated in the recruitment process than in other aspects of employment practice. The law does not require an employer to recruit somebody who cannot do the job. Nor does a disabled applicant have the right to be appointed over a more highly qualified or experienced applicant. We have on a number of occasions managed to show that assumptions about health and safety had prevented a disabled person being offered a job even though the assumptions were entirely without foundation. So we know that discrimination continues to take place.

We have been more successful in enabling disabled people to keep their jobs when employers were seeking to dismiss them but had not taken account of the person's impairment or attempted to make any reasonable adjustments to meet their needs. We still have much to do before employers understand the interaction between an impaired person and the environment in which they work.

However, when I look at the figures of employment and unemployment amongst disabled people I am still amazed at how vague they are. We know that disabled people are only half as likely as non-disabled people to have academic qualifications. But we don't know what qualifications unemployed disabled people have or whether their skills are a good match for their local economy. Why, for example, do we find the highest rates of unemployment amongst people in South Wales, the Northeast, Merseyside and Northern Ireland. All these areas have been traditional areas of high unemployment amongst the general population for over 50 years. They are all the areas that have experienced depopulation as some of those able to do so have moved to more prosperous areas of the country. It is extremely difficult for disabled people to move.

Mental health service users may lack the motivation. People with physical impairments are likely to find it difficult to find accessible housing and, because our social services provision is organised locally, the support offered in one part of the country might not be offered in the next. Indeed, the part of the country in which a wheelchair user lives will even influence the type of wheelchair the health service will provide. So, for many disabled people labour mobility is difficult if not impossible.

There are also other types of discrimination with which disabled people must contend. We know, that over one-third of males over 50 but below retirement age in this country are no longer part of labour force. We also know that disability is largely age-related, especially physical impairment. The 55 -year-old disabled person is not likely to be an employer's first choice.

However, because disability is so often age-related it means that many disabled people were employed when they became disabled. Why do so many then lose their jobs? In Britain we spend enormous amounts of money helping disabled people find employment. It seems to me that we are less dynamic in ensuring that people who acquire health problems or a disability receive health and other support sufficiently quickly.

A study by the International Social Securities Association "Who returns to work and Why?" looked at the widespread problem of back pain and showed that within a two-year period national differences in return to work rates varied in different countries. In Denmark it was 40 percent: in Israel and Sweden 60 percent, and in the Netherlands 70 percent. It concluded that the relationship between the employer and employee was critical and that early intervention was extremely important. The longer somebody remains unemployed the more difficult it is for them to find work.

There is insufficient time for me to explore all these issues in depth. However, I think it is reasonable to conclude that the civil rights legislation alone cannot create full employment for disabled people. We must, as a society, provide disabled people with full support when it matters most; at the onset of the impairment or breakdown in health. We must support the employer at that time and ensure the disabled employee will be welcomed back.

We also need to ensure that rehabilitation services are provided immediately when they can be most effective. We need to assist long-term unemployed people to acquire the skills needed for today's labour market and ensure they are fully supported to obtain those jobs that are available. If we do not do this there is little point in expecting people to find work because it will not be a realistic option.

Finally, we should recognise openly that not all disabled people will be able to work. Organisations such as Remploy and the Shaw Trust do a valuable job in Britain in supporting severely disabled people and helping them to earn a living. Despite their endeavours, some disabled people will still be unable to work and as a society we should support them and enable them to live with dignity and freedom from poverty. However, all must have the choice of working. I hope that this conference will have as one of its outcomes a renewed determination to ensure that civil rights for disabled people, backed by the appropriate support mechanisms, will be some of the building blocks on which we can build a society in which all disabled people can participate fully as equal citizens. And that that message will be heard loud and clear in all our countries.

Thank you for listening

Keywords: Disabled people; civil rights; employment

# **WHY WE NEED A LEGAL RIGHT TO INDEPENDENT LIVING**

Keynote speech presented by Gerry Zarb at European Congress on Independent Living, Arona, Tenerife, 24<sup>th</sup> to 26<sup>th</sup> April 2003

## **Introduction and background**

The paper examines some of the barriers disabled people face in trying to access support to make independent living possible. The paper discusses the possibilities for establishing legal rights to independent living and outlines the policy and campaign work that is being carried out by the Disability Rights Commission (DRC) in the UK.

First, some background information about the Disability Rights Commission.

The Disability Rights Commission operates throughout the UK. The organisation's main task is to address discrimination against disabled people in all its forms, through advice and conciliation, campaigning and legal enforcement. The DRC was created by the Disability Rights Commission Act (DRCA) 1999. Section II of the Act imposes the following duties on the Commission:

- To work towards the elimination of discrimination against disabled persons;
- To promote the equalisation of opportunities for disabled persons;
- To take such steps as considered appropriate to encouraging good practice in the treatment of disabled persons;

- To keep under review the workings of the Disability Discrimination Act (DDA) 1995, which is the main piece of anti-discrimination legislation for disabled people in the UK.

The Commission's overall strategic objective is to bring about a society in which all disabled people can participate fully as equal citizens.

A lot of the Commission's work is taken up with dealing with specific acts of discrimination that are defined by existing laws. But our remit also includes identifying and challenging other forms of discrimination and exclusion - including those that, at this point in time, have no legal remedy. Barriers to independent living currently fall into this category.

### **Why independent living is a rights issue**

There is little understanding (outside of the Independent living movement itself) that independence could, or should be, established as a basic and universal human or civil right. Even in countries like the UK where there has been considerable expansion in availability of resources like direct payments, access to independent living is still essentially granted on a discretionary, rather than mandatory basis. There are also considerable restrictions on both the levels of resources people can receive, and on the ways in which they are allowed to use these resources to organise their support systems.

One of the main reasons for these restrictions is that removal of all the barriers to disabled people's full social and economic participation requires practical action across a variety of social and economic sectors such as education, transport and employment. -Public support

systems on the other hand typically have great difficulty linking all of these actions together and, instead, tend to have different administrative functions to deal with them separately.

So for example disabled people might be eligible to receive services to enable them to access personal assistance at home, but not at work. Similarly, assistance with travel might be available for certain activities (going to school or to the shops, for example), but not for participation in social or leisure activities. In practice this often means that, instead of being able to participate freely in the full range of community life, disabled people have to organise their lives around whatever kinds of practical support are available. This might tackle some of the practical barriers they face but rarely all of them. And, in a lot of cases, the minimum support people can expect to receive does not guarantee much more than simply being able to stay alive.

This almost universal problem is not just about the inefficiency of public support systems. More important still is the issue of controlling public expenditure and the negative impact this has on older and disabled people. Put crudely, removing all of the barriers to disabled people's full social and economic participation is considered to be simply too expensive when compared to meeting the costs of other social and economic priorities. In practice, this means that needs are defined by what public support systems are able, or prepared, to afford rather than by the actual barriers that disabled people face in their day to day lives.

In the UK, for example, eligibility for community care is mainly determined by the level of risk to people's independence. Assistance is only guaranteed if there is a substantial risk to people's health or functioning (if

someone is unable to feed themselves for example). Anything beyond that is largely dependent on availability of resources and the spending priorities of different local and regional administrations (some of whom, to be fair, are much more progressive than others in terms of promoting independent living).

As a result, practically all of the existing support systems place some kind of ceiling - either in terms of cost or eligibility criteria, or often both of these - on the level of resources at which independent living is considered to be cost-effective. This means of course that people for whom independent living is considered to be too expensive are faced with a stark choice between struggling to maintain their independence in the community, or entering institutional care. Effectively, this amounts to putting a price on people's freedom. The Disability Rights Commission fully supports the Independent Living Movement's belief that this is a totally unacceptable abuse of people's fundamental human rights.

There are numerous ways in which disabled people are discriminated against as a result of not having any basic rights to independent living. These are just a few examples.

- Enforced admission to institutions and cuts in services:

There are very few places in Europe where disabled people have any guarantees about being able to live in the community. In the UK for example, there has recently been an increase in reports of disabled people being threatened with enforced admission to institutional care as a result of cuts in social services budgets and the limits this places on public expenditure on disability services.

As budgets come under pressure some local administrations are also raising the threshold for eligibility for services with the result that, in some cases, disabled people are being denied access to essential support for basic activities like washing and eating. For example, in one case the Disability Rights Commission has dealt with in the past few months, disabled people were told that they could only be guaranteed to have a bath or shower once a fortnight and, even in then, only if there is a substantial risk to their health.

The Disability Rights Commission believes that eligibility for services should be based solely on needs, not costs and resources. It cannot be right for anyone in a civilised society to be denied such basic needs like being able to wash.

- Denial of opportunities for training and employment

Opportunities for economic participation are an essential part of independent living. However there are many examples of people being prevented from participation in training or employment as a result of not having access to personal assistance or other resources necessary to maintaining independence. Again, this is as much to do with a failure to understand what independent living is supposed to be about. For example, in the UK, as in many other countries, disabled people do have various entitlements to practical assistance at work. They also have varying degrees of protection against discrimination in employment. But, if you are not guaranteed the support you need to get up in the morning so you can actually get out to work, these rights are in reality of limited use.

- Discrimination in access to direct payments and personal assistance

Direct payments to arrange personal assistance are also an absolutely crucial resource for enabling independent living. However, there is significant inequality of access to direct payments on the grounds of discriminatory assumptions about disabled people's capacity to manage their own affairs and the lack of any rights to support systems for people who need assistance to manage their own support arrangements.

- Denial of access to advocacy and communication support

There are very few rights for people who require assistance with communication. Similarly the provision of advocacy to enable people to make real choices about what services they receive and how they are delivered is almost always on a purely discretionary basis. Often the people who most need this kind of support are the least likely to get it.

The Disability Rights Commission believes that all disabled people should have a right of access to advocacy if they need it. All disabled people should also have a right to support to meet their access, information and communication needs. These services are not only vital for maximising opportunities for independent living. For many disabled people, they are also essential to enable them to exercise their basic human and civil rights.

- Denial of the right to receive appropriate health care

Access to appropriate health care when you need it is also vital to enabling independent living. However, a combination of physical, organisational and attitudinal barriers mean that many disabled people have restricted access to basic health care facilities. For people who are assumed to have limited capacity there is further

discrimination in terms of compulsory treatment that, again, can often mean people being forced to go into institutions against their wishes.

Most serious of all perhaps is that disabled people are sometimes denied essential health care because of the medical profession's judgement about the value and quality of disabled people's lives. In many countries there is no legal protection against this happening and the consequences in far too many cases can - quite literally - be fatal.

- Attitudinal barriers

A related problem is that disabled people's aspirations for independence are too often undermined by over-protective or negative attitudes about disability amongst both service professionals and the general public.

Most disability services are based on the belief that disabled people are 'vulnerable people' who need to be protected and 'cared for'. This is extremely damaging to the development of independent living as it only serves to reinforce perceptions of disabled people as passive 'recipients of care', rather than active citizens facing practical barriers to participation in the social and economic life of the community. By refusing to acknowledge any other legitimate role for disabled people in society, such beliefs are also discriminatory.

- Regulation

Discriminatory attitudes about the value of disabled people's lives are further reinforced by other areas of policy and legislation such as the European Commission's health and safety regulations and the various forms of Mental Health legislation adopted in different European

countries. For example, much of the existing legal and policy framework for social care adopts a particularly restrictive approach to the assumed 'vulnerability' of disabled people and the potential risks, either to themselves or others, which are presumed to be associated with extending independent living. Again, in many cases, this effectively provides a legal justification for denying disabled people's rights to independent living.

Faced with the evidence of these kinds of examples it seems strange, to say the least, that we should even need to be discussing a right to independent living. Future generations are likely to look back on this and wonder why such abuses weren't outlawed long ago and why civilised societies were seemingly so content to exclude such a large number of citizens from the life of their communities.

But, we do not have to - and indeed we cannot - wait for some future utopia in order that all disabled people can have the freedom to live independent lives as full and equal citizens. The denial of people's rights to independent living can, and must be, challenged now.

### **The campaign to establish a legally enforceable right to independent living**

It was against this background that the Disability Rights Commission has recently started to develop a programme of work on establishing a basic enforceable right to independent living in the UK.

In 2002 the Disability Rights Commission formally adopted the following general policy statements in relation to independent living:

**"There should be a basic enforceable right to independent living for all disabled people. Policy**

objectives for social care services need to include guaranteed minimum outcomes, backed up by a right to independence. The provision of social care must extend beyond functional 'life and limb' support to include support to enable participation in social and economic activities.

**All social care support services should be based on the principles of independent living.** All organisations commissioning and providing services should be aware of the social model of disability and be fully committed to delivering services that enable choice, control, autonomy and participation."

(Source: DRC Policy Statement on Social care and Independent Living, August 2002)

For the Disability Rights Commission, the term 'independent living' means disabled people having the same choice, control and freedom as any other citizen - at home, at work, and as members of the community. Any barriers to independent living can therefore be viewed as having a direct bearing on disabled people's freedom to exercise their human and civil rights. In other words, full participation and inclusion can and must be built on the foundation of independent living.

### **Next steps**

Establishing an enforceable right to independent living is a long-term objective that could take 3 to 5 years, or maybe even longer, to achieve. As a first step to meeting this objective the Commission has started work on gathering evidence to highlight existing barriers to independent living, and how this impacts on disabled peoples' ability to exercise other rights. This evidence will be used to

support the case for an enforceable right to independent living.

During the next year we also intend to start examining the broad legislative and policy options for establishing an enforceable right to independent living, including the kinds of barriers to independent living that need to be legislated on and the legislative options that might be the most fruitful to explore further. This might be by making changes to existing community care legislation at national level, for example, or using the provisions in the Human Rights Act, or it might mean completely new forms of legislation at either national or European level.

Work in subsequent years (2004 onwards) will concentrate on the following objectives:

- Establishing a consensus among about how 'independence' should be defined as a legal concept that embraces all groups of disabled people.
- Working up detailed proposals for translating this legal concept of independence into practical and enforceable rights.
- Campaigning and lobbying to seek adoption of the necessary changes to legislation.

### **Key challenges and opportunities**

There are going to be many obstacles to overcome before the right to independent living is a reality for all disabled people. There are also opportunities for challenging the denial of this right, and these must be used as much as possible.

First, one of the most important challenges will be to overcome the differences in people's understanding of what independent living means, and why it is so important.

We need to be clear that, when we talk about disabled people having a right to independent living, this means all groups of disabled having the right to whatever kind of support they need to make their independence possible.

This also means that we have to adopt a truly inclusive definition of independent living. Different individuals and groups need different kinds of practical support to achieve freedom, choice and control. For example, access to communication support for deaf people and advocacy or supported decision making for people with learning disability is just as essential to achieving independent living as personal assistance. Any definition of independent living that does not explicitly acknowledge the different ways that disabled people define and achieve independence will not be fully inclusive.

Second, although making the concept of independent living broad enough to embrace all disabled people has many positive benefits, it also creates new challenges. The biggest challenge will be to find ways of transforming and extending existing models of independent living without diluting the essential philosophy and principles on which it has been built.

For example, the concepts of choice, control and self-directed personal assistance have not always been seen as relevant to people with learning disabilities or mental health problems as they have to other groups of disabled people. Making choice and control possible for these groups would mean that the concept of independent living needs to be broad enough to include different ideas about things like how we define capacity for decision making and

the role of advocates in enabling people to communicate their own choices and aspirations.

There are also challenges associated with the extension of independent living options to older people as we are seeing for example in the UK. Again, some groups of older people will have slightly different ideas about what independence means to them, and how they want to achieve it. This could create new opportunities for building alliances but there are also concerns about the possibility of diluting the concept of independent living if the boundaries are extended too far.

Another important challenge we are going to face is how to find the right kind of legislation to support a right to independent living for all disabled people.

There will almost certainly need to be changes to legislation at the national level and the precise form that takes will obviously vary from country to country. However in order to make this possible we first need to establish the general principle that independent living is a basic and universal human and civil right.

One vehicle that offers positive potential for establishing this principle is the European Convention on Human Rights. In the UK we have recently seen some success in using the Human Rights Act to support disabled people's right to independent living which gives a great deal of positive encouragement for the future.

For example, in one case recently supported by Disability Rights Commission, the courts ruled that organisations providing community care services must take proper account of people's dignity, independence and human rights and respect their "rights to participate in the life of the community". Another landmark case last year

concerned a woman who, because of unsuitable housing could only use the downstairs rooms in her family home. In this case the courts ruled that the local authorities failure to provide adequate housing adaptations created a breach of her right to privacy and family life under the Human Rights Act.

These cases are potentially very encouraging. In it's present form the scope of the Human Rights Act is nowhere near broad enough to fully protect people's right to independent living, but cases like this can go along way towards establishing the case for such rights. As we have seen in the UK, the Human Rights Act can also help to establish benchmarks about what degree of independence disabled people have a right to expect, and to highlight deficiencies in national legislation that can be used as basis for lobbying and campaigning.

### **Closing comments**

How we achieve the right to independent living is a fundamental issue, which needs to be considered very carefully. One of the most important tasks - which this Congress can help to achieve - will be to build and maintain alliances and partnerships to make sure that any proposals that are developed are fully compatible with the aspirations of disabled people generally, and the independent living movement in particular.

The most important challenge of all will be to develop a clear understanding - among both decision-makers and the general public - of what independent living means and why it is important.

For example, we need to question why, in the 21st century, it is still seen as acceptable for disabled people to be living in institutions against their wishes, to be denied

access to basic support to enable them to enjoy a family or social life, and to be guaranteed no more than the bare minimum services necessary for day to day survival.

Finally, we need to win the argument that independent living is a basic universal human and civil right. Only then will it be possible for all disabled people to participate fully in the social, economic and civic life of the community.

Keywords: Disabled People; Independent Living

## **Single Equality Act TUC conference May 2003**

### **Bert Massie**

The Disability Rights Commission believes strongly that the government should introduce a Single Equality Act (SEA), that is, an Act which provides for all strands the same protection from discrimination and the same enforcement powers, as well as a positive public sector duty. There are four major reasons for this.

The first is that there can be no doubt that at the moment equality legislation in this country is confusing, inconsistent and, in some cases, irrational. There remains widespread discrimination against groups of people in our society and comprehensive, consistent and enforceable legislation to enable people to enjoy full civil rights would be a significant step in the right direction.

Secondly, disabled people know from long experience that campaigns to change people's attitudes and to win their hearts and minds invariably fail unless people know that behind those campaigns there is the sharp and eager sword of law that somebody is able and willing to use. If, as a society, we believe that those who face discrimination should be protected, then we should offer more than sentiment and goodwill and give them the protection of law.

Thirdly, disabled people have much to gain from an SEA because other groups enjoy rights currently denied to disabled people. It is equally important that any new legislation preserves those parts of the Disability Discrimination Act that give specific protection to disabled people.

Finally, we face of the prospect of a Single Equality Body in which each of the groups it represents will, unless we have a Single Equality Act, enjoy a different range of rights according to which aspect of their identity is or isn't covered by different aspects of discrimination law. There will be no fairness or equity in this situation and, as a consequence, one of the first tasks of the SEB will be to seek to upgrade the rights of the three new strands, which will, on current proposals, only have rights relating to employment matters. This worthwhile activity will inevitably be at the cost of other activities and will distort the early work of the new body.

I have argued many times that to have an SEB before a SEA is to put the cart before the horse and such carts tend not to move very far, if at all. There is a logical way of doing things and adopting irrational policies will not enable us to build the type of world in which we all wish to live.

For these reasons the DRC has broadly welcomed Lord Lester's Bill and we are grateful to him for the efforts he made to incorporate into it appropriate provision for disabled people.

Disabled people started fighting for civil rights legislation in the 1970s. We had to wait until 1995 before the Disability Discrimination Act was finally approved by Parliament. The final parts of this Act will be introduced in October next year, more than nine years after the Act received Royal Assent. Nobody can realistically accuse disabled people of lacking patience!

We had to wait a further five years for the Disability Rights Commission to be created. Disabled people, perhaps more than any other group, know from experience the futility of having rights with no enforcement mechanism. We believe, therefore, that there is little point in having an

SEA unless it is accompanied by an enforcement mechanism. We recognise that Lord Lester's Bill does propose to create a Single Equality Body and while we welcome this we do not believe it adequately meet the needs of disabled people.

The government has, of course, also published its consultation document Diversity and Equality: Making it Happen. The DRC is eager to play a full and positive role in helping to shape future equality institutions. In seeking to create an effective Single Equality Body we should examine what it needs to do and then create the structure to achieve this. I think we all have some unique as well as common objectives for the new body. We all want to create a society which is inclusive and in which diversity is not only accepted but also welcomed and celebrated. We all readily accept that each of us has many facets to our identity and strict pigeonholing is not always helpful. Sometimes discrimination and disadvantage will be based on two or more such facets of identity, at other times it will not.

Of over 7,000 cases of discrimination considered by the DRC fewer than 50 related to multiple discrimination, so we need to keep a sense of proportion. People faced discrimination because they were disabled and for no other reason. While the impacts of different forms of discrimination can be similar – social exclusion, lack of access to employment, stigma – the way discrimination operates varies and so must the solutions. It will be crucial for any SEB to retain expertise in the form of experience and knowledge of particular types of discrimination and of the solutions to it.

For most of my life and that of many other disabled people we have been forced to the sidelines and watched non-disabled people making decisions on our behalf. I have no doubt that without exception they meant well. I'm

equally convinced that in most cases they were wrong because they failed to understand the life experience of disabled people because they had no personal experience of disability. Most of the major changes in provision for disabled people and in the battle for protection against discrimination only came about when disabled people demanded the right to speak for ourselves. When the Disability Rights Commission was established this principle was enshrined into the Act. At least half of the commissioners of the DRC must be disabled people. In fact, of 15 commissioners 11 are disabled. Nearly 40 percent of the staff of the DRC is disabled. This has a major impact on our work and the approach we take. It is a major reason for the success of the DRC in which disabled people working with non-disabled commissioners and staff, who are an essential part of the equation, create an atmosphere in which we all live, breathe and fight to create a society in which disabled people can participate fully as equal citizens.

It is also the reason why we believe that the approaches to the SEB in Lord Lester's Bill, despite its other strong points, and in the government's consultation document are fundamentally flawed. Both would disenfranchise disabled people and turn the clock back 25 years to the days when non-disabled people pontificated about what was good for disabled people. That is why the DRC is proposing a radical blueprint for the proposed SEB. We believe there should be an overarching Commission. It would be responsible for the core support departments and those areas where fertilisation across the strands is helpful. In view of the recent parliamentary report, it seems sensible to also give the overarching Commission duties to promote and enforce the Human Rights Act in cases where discrimination against one or more of the strands is involved.

Within the Commission there should be separate units, strands or streams, call them what you will, representing those of the six strands that would prefer such an arrangement. In the case of disabled people the strand should be run by disabled people, as the DRC is, and it should have executive powers and functions concerning work specifically related to the needs of disabled people. It should have its own budget, manage its own research, and provide casework and legal support. We have found that within the DRC there have been many cases where the detailed knowledge of disability, which disabled commissioners and staff have, has enabled us to make the right decisions when the wrong decision seemed to be the common sense one.

If the government introduces a Single Equality Act or other means to equalise the rights, upwards of course, of all the groups to be covered by the new body; and it ensures the SEB is able to represent the needs of the people for whom it is established in the way proposed by the DRC, I think the new body could be a success and a great success at that.

If, however, the government withholds civil and human rights; preserves the current incoherence; and creates a new body which is administratively neat but divorced from its users, it will unravel a great deal of the good work that has been done in recent years. It is far better to move forward slowly and to do so in the right direction than to rush ahead in the wrong direction and land us all in the quicksand. I believe the DRC has found a way forward: let us take it

Keywords: Disabled people; Rights; Single Equality Act

**Speech to Disability Rights in Europe From Theory to Practice**

## **Bert Massie**

Conference to mark the EYDP Leeds University 25  
September 2003 Coming of age or cut off in our prime  
Single Equality Commission and the disability rights  
agenda

This conference marks the growing maturity of disability rights: In Britain - with the unfolding of the DDA and the Human Rights Act, In Europe - and with the implementation of the Employment Framework and proposals for a disability specific directive - and Globally - with long over-due progress towards a U N Convention.

Disability rights are young as a legal or academic concept. It is of course not new to me or to many of you. I grew up with an awareness of the need for legal rights for disabled people.

But disability rights are new as a legal or academic concept.

Disability rights and recognition of the disability dimension of broader equality and human rights is just beginning to gain recognition on the statute book and in court judgements.

We need this sort of a conference to develop our thinking - to debate and learn from each other. The disability world needs the maturity to engage in this form of debate where we hold up our deep-seated assumptions for scrutiny. Is disability discrimination distinctive? If so, in what way? What are the similarities with the struggle of other groups for equality and human rights? What have we to learn from each other?

The challenge represented by the single equality body project in this country makes the need to strengthen and deepen our understanding of disability agenda particularly urgent. We are a young movement. We need to mature rapidly if we are to promote disabled people's distinctive needs and experiences, There is a case to be made for a Single Equality Body but unless it is done in an appropriate way it could result in the further marginalisation of disabled people and of our concerns.

My own view is that human rights have a particular importance for disabled people. I think we might win the battle of civil rights in the next 10 years but the battle for human rights will be a long hard slog. It is likely that the proposed SEB will be able to promote human rights but not enforce them. The more cynical amongst you might think that what this means is that the new body will be able to talk about human rights but not enforce them. I suspect you are right. I think the right to independent living for disabled people - which the DRC has wholeheartedly embraced - is at the heart of this battle

### **What do we mean by independent living?**

The term independent living refers to all disabled people having the same choice, control and freedom as any other citizen - at home, at work, and as members of the community. This does not necessarily mean disabled people "doing everything for themselves", but it does mean that any practical assistance people need should be based on their own choices and aspirations.

Access to appropriate social support is fundamental to many disabled people participating fully in social and economic life. Any restrictions on such support impede disabled people's freedom to exercise their human and civil rights.

At present access to independent living options is still essentially granted on a discretionary, rather than mandatory basis. There are considerable restrictions on both the levels of resources people can receive, and on the ways in which they are allowed to use these resources to organise their support systems. So, for example, disabled people might be eligible to receive services to enable them to access personal assistance at home, but not at work. Similarly, assistance with travel might be available for certain activities (going to school or to the shops, for example), but not for participation in social or leisure activities.

In practice this often means that, instead of being able to participate freely in the full range of community life, disabled people have to organise their lives around whatever kinds of practical support are available. This might tackle some of the practical barriers they face but rarely all of them. And, in a lot of cases, the minimum support people can expect to receive does not guarantee much more than simply being able to stay alive. Independence, in the words of Ann McFarlane, means more than "being able to make yourself a cup of tea and feed the cat".

We need to question why, in the 21st century, it is still seen as acceptable for disabled people to be living in institutions against their wishes; to be denied access to basic support to enable them to enjoy a family or social life, and to be guaranteed no more than the bare minimum services necessary for day-to-day survival.

Disabled people do not have any effective guarantees as budgets come under pressure. Some local administrations are also raising the threshold for eligibility for services with the result that, in some cases, disabled people are denied help even with very basic activities like washing and eating.

For example, in one case the Disability Rights Commission has dealt with in the past few months, disabled people were told that they could only be guaranteed to have a bath or shower once a fortnight and, even in then, only if there is a substantial risk to their health.

The DRC is aware of examples of children being out of school because no one is prepared to administer medication to the child during the day or because best practice in supporting teachers in managing behaviour is not in place.

A right to independent living must mean, as a minimum, a right to protection against enforced admissions to institutional care. It is outrageous that in this day and age individuals should be forced to live in institutions purely because it is deemed too expensive to support them in the community. The DRC is aware of a recent increase in reports of disabled people being threatened with enforced admission to institutional care as a result of cuts in social services budgets.

A 2003 John Grooms Inquiry found:

More than 8,000 pre-retirement age adults are living in care homes designed primarily for a different client group, usually elderly people.

Nearly 80% of local authorities limit the cost of community care packages and 75% of them use the cost of alternative residential care as the ceiling.

The idea that enforced admission to institutional care could be outlawed does not seem quite so ambitious if we consider recent decisions made by the Supreme Court and Federal Government in the United States.

In the recent Olmstead case, the US Supreme Court ruled that "unjustified isolation or segregation of individuals with

disabilities through institutionalization is a form of disability-based discrimination prohibited by the Americans With Disabilities Act 1990".

This does not produce unconditional protection against enforced institutionalisation, as, notably, it is permissible for States to take availability of resources into account when making placement decisions. However, the Court also ruled that the objective of ensuring that all disabled people are enabled to live independently should be proactively supported by provision of Federal Government funding.

As a result the Federal Government has recently announced a \$2.1 Billion funding programme under the "New Freedom Initiative" to assist disabled people already living in institutions to return to the community. There will also be a comprehensive review of federal policies and regulations that impede community living.

We need to develop and articulate the equality and human rights arguments for a right to an independent living - and then we need to work out how to make such a right a living reality not an academic nicety.

However, if we are to influence public policy so it serves rather than oppresses disabled people, those of us involved in that process need the support of academia. We need you to supply the bullets for us to use as ammunition. It seems to me that the manner in which public bodies calculate the cost of supporting disabled people is at best crude, and possibly misleading. Is the cost of residential care just the weekly invoice? What is the cost of a person's dignity? Can we put a price on it, and, if so, how? How do we calculate the cost of the fear in which many disabled people live knowing that without committing a crime, and without the trial given to even the most menial felon, they could face a life time of

incarceration from which there is no escape and no parole. I recently had lunch with one severely disabled woman who has an expensive care package and is in just this position. She is afraid in case the package is withdrawn. And, of course, she can never move to another part of the country because a different local authority might refuse to pay anything. Her freedom is limited to her postcode.

I mentioned earlier the proposed Single Equality Body. There is a great deal of work to do on this but if we are to believe the Department of Trade & Industry's Consultation Paper there will be no room for disabled people to determine disability policy within the new Body. At the DRC 11 of my 15 Commissioners are disabled. So are almost 40% of my staff. They are a massive strength and resource. I believe in the mantra of the disability movement of "nothing about us without us" but it looks that some think it should be "everything about us without us". Can academia give us the objective evidence that public policy affecting disabled people is more efficient and effective when disabled people are been involved in writing it? Can we show that when we are excluded the policy fails to work? I can think of a number of cases where disabled people have opposed so called improvements and have been right when history has show they were no improvements at all. We need academia to do the research and to give us the facts.

I hope that in the future disability studies will grow in our universities and that it will promote a free and open debate in which disagreement is welcomed as a way of honing ideas. I also hope that even more than in the past academia and those working on public policy can work closely together and also together achieve the results we all desire.

Bert Massie  
25 September 2003

Keywords: Disability rights; Europe; Independent living;  
Single equality body

**National Housing Federation Annual Conference 25  
September 2003  
In Business for Neighbourhoods**

**Bert Massie**

In my various capacities as Chairman of the Disability Rights Commission, a housing association tenant and Board member of Habinteg Housing Association I am particularly pleased to be speaking to you today.

Public services are changing and the National Housing Federation's new direction is to be welcomed as a proactive campaign to promote the recognition and the quality of homes and services provided by housing associations.

My own housing history demonstrates the importance of housing associations in meeting the needs that the private sector could not and would not provide. As a young man, and a full time wheelchair user, arriving in London in pursuit of a career there was little accessible housing; housing designed to remove the barriers that exclude disabled people. It took a housing association to offer me suitable housing, this was a success story almost thirty years ago and provides the kind of experience that housing associations can offer when setting the agenda rather than just following it. – and an unashamed plug for my own association's work – Habinteg.

The confidence to develop new ideas grounded in working with people who actually live in the homes is the critical test for the housing association movement.

Let me give you an example: we all know that the government is committed to developing new homes using modern methods of construction. Housing associations

are falling over themselves to get a piece of the action. But, what compromises are you prepared to make:

Homes that can't be adapted?

Homes that are not accessible?

Standard designs that meet the needs of developers rather than consumers?

Whether we like it or not housing associations core customers will include many who are excluded, whether through financial or social reasons. The most recent Housing Corporation census of Housing Association tenants showed that 42% of housing association households contained someone with a long term illness or disability. That's over two in five households and this is a figure that is increasing based on the Corporation's previous research. During August, Housing Today published some interesting articles about our aging population. As a society we are getting older and there is a correlation between age and disability.

Yet housing associations' record of responding to that clear and increasing need is not always that impressive. In some respects we are designing for yesterdays population – not tomorrows. But our home must serve tomorrow's people. I say that as a critical friend to housing associations.

Let me take four key issues which arise from the work of the DRC and give my expectations about what a responsible social businesses, like housing associations, should be considering. If anyone believes that any of these expectations are unreasonable please let me know.

### **Adaptations**

Housing associations should provide an effective customer service providing adaptations to their homes when their tenants request it. The service should

encourage people to stay as independent as possible and continue to live in their homes and as part of their local community.

### **Housing Design**

New housing developments should be barrier free, setting standards that allow disabled and non-disabled people to share their homes and environment. Housing that receives public funding should be specifically designed to allow future easy adaptation as and when the circumstances of the resident changes. All public spaces should be fully accessible and designed for all the community to share and enjoy. People don't just live in houses and flats, they live in communities and need access to it. If social inclusion is to be delivered then we must all grasp the concept of inclusive design as well as inclusive services. In housing that means building in lifetime homes from the start. It must be the minimum starting point for inclusive design.

### **Employment**

Housing association staff should be representative of the communities they serve, both to better understand their customers needs and as a reflection on the public investment that housing association's enjoy. How many disabled people do you employ? How many are on your Boards?

### **Services**

Services that housing associations provide should be available to all customers and should not discriminate on the basis of disability, for instance customers should be able to get into all of your offices!

Now those four expectations are hardly Martin Luther King and "...I have a dream" but unfortunately I don't believe

that many associations can claim that they are meeting even these basic standards.

Whilst the DRC much prefers persuasion and the dissemination of good practice, on some of these issues I must advise you that there will be no choice as legislation is introduced on issues like access to services. But, I don't want to scare you with another set of regulators, with another set of rules.....The new Chair of the Housing Corporation is here for that...what I would like is to hear housing associations positively making the case for that change.

My expectations of housing associations are far higher than those I have outlined because I do believe that housing associations have and can continue to make a tremendous impact in reducing the discrimination disabled people face in British society.

I expect housing associations to be breaking down barriers at the leading edge of this change not trailing behind progressive private sector organisations like B&Q and HSBC. That's my "Housing's Better Future".

Thank you

Bert Massie  
25 September 2003

Keywords: Accessible design; Disabled people; Housing

## **Preparing for the Disability Discrimination Act Part 2 Employment Management Conference**

**Bert Massie**

**Metropolitan Police** Conference 7 October 2003 for  
senior managers

I should like to thank you for inviting me to speak to you today. Some years ago I addressed part of the Army on how disabled people could be soldiers. They were polite but clearly thought I had arrived from another planet! This is because of preconceptions about disability and disabled people.

The police, like the army, are always operating under huge pressures and perhaps especially so in parts of London. When Gilbert and Sullivan wrote that “ a policeman’s lot is not a happen one” the officers were about to resolve a confusing relationship regarding pirates who were also Peers of the Realm. I hope that today in explaining something of the Disability Discrimination Act that, if I can’t make the police officer’s job happy, perhaps I can make it less confusing.

The Disability Rights Commission (DRC) was created by the Disability Rights Commission Act (DRCA) 1999. Section 2 of the DRCA imposes the following duties on the Commission:

- To work towards the elimination of discrimination against disabled persons
- To promote the equalisation of opportunities for disabled persons
- To take such steps as is considered appropriate with a view to encouraging good practice in the treatment of disabled persons

To keep under review the workings of the Disability Discrimination Act (DDA) 1995 and this Act.

The Commission has given itself the mission of seeking to achieve a society in which all disabled people can participate as equal citizens.

In just over two years our Helpline received almost 400 calls about issues related to the police. Just under 250 of these were about employment and 150 concerning service provision.

Let me give just a few examples that are from various parts of the country:

A woman contacted us whose child had died. She is deaf and uses British Sign Language but when the police came to interview her they didn't have an interpreter so she didn't understand what was going on.

Another man contacted us because he had difficulty standing for long periods but had had to wait for 30 minutes standing in a queue at the police station waiting to report a crime. He was told there were no chairs available.

In relation to employment we have had a significant number of calls from disabled people who believe they have been turned down for employment because of conditions such as epilepsy, history of cancer, previous knee or ankle injuries.

In another case a civilian member of the police force agreed with his employer that he would be redeployed because he had become disabled but he has been offered a post at a lower grade.

We have also recently supported a case where Ms Marshall, a young woman with excellent academic

qualifications including a first class degree from St Andrew's University and an MPhil from Cambridge University applied for the civilian post of finger-print recognition officer with a police force. She was offered the job, only to have the offer withdrawn when occupational health screening revealed her diagnosis of bipolar affective disorder. With DRC support she won her case in early 2001 and was awarded nearly £20,000 in compensation although in 2002 the case was successful appealed and we don't yet have all the details.

However a significant role for the DRC is providing advice and information for employers and organisations that provide services to the public, so we also receive calls from the police service and associated bodies asking for help and advice which we are happy to give. For example, we were recently contacted by someone responsible for recruiting to some vacancies for a new central police training authority for advice on reaching a broad range of people.

There are at least 8.5 million disabled people in this country who are members on their community just like everyone else. They will be concerned about crime and are more likely to be victims of crime than their non disabled neighbours, conversely they may be perpetrators of crime. However, we will start with the issue of disabled people as employees of the police force and therefore their role in preventing crime and enforcing the law.

## **The police service as an employer**

### **Police and the Disability Discrimination Act**

Police officers (including British Transport police) will be covered by Part 2 of the DDA from October 2004. This will mean that police officers and police cadets and those seeking employment will have the same rights as other employees to non-discrimination and to reasonable

adjustments at work. Of course, you already have duties relating to civilian employees.

## **Summary of Part 2 of the DDA**

Part 2 of the DDA prohibits following sorts of discrimination in employment:

**Direct discrimination** i.e. treating somebody less favourably on the grounds of disability where that person has the same circumstances, skills and abilities to do the job as a non-disabled person

**Failure to make reasonable adjustments** when the disabled person needs these adjustments to be able to carry out their job. Reasonable adjustments are things like changes to the working day, time of the medical appointments, and special equipment in the workplace

**Other less favourable treatment**

**Harassment on the grounds of disability**

**Victimisation of somebody who take action under the DDA**

## **How will this affect the police?**

### **Recruitment**

The police will have to ensure that there are fair recruitment procedures, that don't discriminate against disabled people.

For example, somebody could not normally be rejected on the basis that they have a mental health service user or have had a mental health problem in the past. You need to assess if they person could do the job. However, there is nothing in the Act that requires you to employ someone who is unfit for the job or unable to do it. Someone as disabled as myself would clearly have difficulty in doing some parts of the job a police officer is required to do.

However, someone with a facial disfigurement might be able to do the entire job yet they are still defined as disabled under the provisions of the DDA.

### **In work**

Reasonable adjustments may need to be made so that disabled police officers can do their job.

For example, a policeman with dyslexia may need help with filling out forms or need adapted computer software.

### **Job retention**

Police officers who become disabled should not automatically be given desk jobs, as this may amount to less favourable treatment. Reasonable adjustments to help them to do their own job need to be considered first. The way to approach this is to analyse that are the problems the person faces and then see if they can be overcome.

### **Pensions**

Occupational pension schemes are also included in Part 2. Employers and pension schemes are under duty not to discriminate against disabled people, for example by not allowing the disabled police officer entrance to the pension scheme or by offering worse terms.

### **Police qualifications**

Vocational qualifications are also covered by the Act from October 2004. Awarding bodies, which offer qualifications in specific areas of police work, or more general police skills, have a duty not to discriminate.

### **Police Federation**

As a trade organisation, the police federation is also covered by the Act, and must not discriminate against disabled police officers.

### **What about health and safety?**

Health and safety should not be used as an excuse to discriminate against disabled police officers or to remove them from active duty to a desk job. Health and Safety legislation takes priority over the DDA but it is important that it is only used appropriately.

**Blanket Bans** Under the DDA, blanket bans, which amount to direct discrimination, are not allowed. The individual disabled person and the job they do or want to do need to be considered. For example, someone with a mental health problem, with diabetes or epilepsy should not automatically be assumed to be health and safety risk. It would be unlawful to exclude these people from entry to the police force or from promotion, without considering the individual circumstances and whether they could do the job, with reasonable adjustments

**Risk assessments** Where there is a real health and safety concern, a risk assessment can be carried out by somebody who understands the job and knows about reasonable adjustments that can be made. The doctor's letter saying that someone "should not work because of health and safety risk" should not necessarily be taken as last word on the issue. The doctor may not know about different ways the job can be done, about reasonable adjustments and about the duty of the police force not to discriminate.

### **The DDA employment codes of practice**

New codes of practice are being written by the DRC to accompany the changes on the law from October 2004.

Draft codes are now out for consultation. The first code covers employment issues (including the police). The second code covers qualifications bodies and trade organisations. Consultation packs can be obtained from the DRC helpline or from our website.

## **Disabled people and crime**

A wide range of research, including from the Joseph Rowntree Foundation, Mencap and Nacro shows that disabled people are more likely to be victims of certain crimes and forms of anti-social behaviour than non-disabled people.

### **Verbal harassment**

Research from Mencap in 1999 shows that 9 out of 10 people with learning difficulties interviewed were harassed in the previous year. In a recent report Nacro detailed a much smaller sample but still showed how 11 out of the 14 disabled participants in their two focus groups stated that they had been a victim of verbal harassment, many of them had experienced this form of victimisation repeatedly.

### **Sexual abuse**

Further research from Mencap in 2002 shows that disabled people are four times more likely to experience sexual abuse than non-disabled people, and people with learning difficulties are particularly likely to experience this type of abuse.

### **Assaults, theft and mugging**

Recent Nacro research with Southampton City Council showed that disabled people were four times as likely to have property stolen from them with the threat or use of violence.

The Mencap report Living in Fear found that nearly a quarter of respondents had experienced a physical assault and stated that:

“One in four people with a learning disability have been physically assaulted either in the street, on transport, at the day centre, at college, at home or when using leisure activities. Assault in a public place seems to be a significant problem. Robbery is often a common motive for assaults, with petty criminals focusing on vulnerable people.”

## **Burglary**

The Nacro research showed that disabled people were almost twice as likely to be burgled as non-disabled people.

Research also shows us that these types of crime are also generally the crimes that disabled people fear most.

The Nacro research and calls to our own helpline show that many disabled people feel that their experiences are not being taken seriously by the police or that they experience problems in terms of accessing information, accessing police stations or meetings or getting the communication support they require.

Some of the quotes from disabled people about their experience of crime and harassment are quite chilling:

For example in the recent Mencap report a middle aged man from Luton reported that:

"I was walking out of Woolworths. I was attacked by three youths. I was punched and kicked and told not to come back again because I had a learning disability."

A man in his twenties said:

"a group of schoolboys call me names and spit at me. Once they threw a coke bottle at me, then they forced my hand into a letter box and forced the skin off my knuckle."

But the harassment goes beyond name-calling and assaults on the street. A woman from Yorkshire was quoted in the report as saying:

"We had stones thrown at our windows and yoghurts and bad eggs. They used to put fishing wire across the gate so when we went out we fell over the line. After a period things got even worse. They threatened that they would burn our house down and we had dog shit through the letterbox. They said people like you should be put down at birth."

You will know of similar cases involving other groups of people but I would ask you to consider how difficult it is for disabled people to fight back. We really are depending on you.

### **What can be done?**

The DRC welcomes the call recently from the Metropolitan Police Authority for increased sentences for those convicted of hate crimes including those against disabled people. But of equal importance is the Metropolitan Police Service's recent introduction of "flagging" of hate crimes committed against disabled and elderly people and its current inclusive campaign to combat hate crimes across all London's communities. I am hopeful that the current Criminal Justice Bill will give you further powers to tackle such behaviour.

Recommendations from Nacro include improving recording and monitoring of crimes against disabled people, consultation with disabled people to improve reporting rates and access to police stations. The DRC would support these recommendations and also suggest

measures such as disability equality training for police service staff and ensuring that disabled people had access to good communication support and accessible information.

## **The DDA and service provision**

The DDA doesn't just address the responsibility of employers but also addresses issues for those providing services to the public including the police service.

At present the law requires changes to policies and practices plus the provision of additional services or equipment where this would make it easier for disabled people to use a service. From October 2004 service providers, including the police service, should have made improvements to their services to ensure they are accessible to disabled people. It might be appropriate to alter physical features of your premises to ensure that it isn't unreasonably difficult for disabled people to use that service. But in some cases there might be other options. Let us consider a small rural police station that is really where the officer lives but there are three steps to the door. If they cannot be ramped the Officer might agree to visit someone in their home if they cannot get up the steps. It is not perfect but the service if not the building is being made accessible.

All of these duties are underpinned by the concept of reasonableness so factors such as the scale of the problem that is making it difficult for disabled people and the resources of the service provider would be significant factors to consider when deciding what to do.

### **What does this mean for the police service?**

In practice for the police service this would mean that at present you should be looking at doing things like ensuring that information you have available to the public

is accessible for disabled people, that if you are arranging a meeting you consider the accessibility of the venue for disabled people and that means of contacting the police can be used by disabled people including those with a hearing impairment.

Within police stations although you don't yet have to have made changes to the physical access you should be looking at things like having seating in the waiting area, communication aids like an induction loop at the reception and in interview rooms. Additionally communication support, for example British sign language interpreters, should be considered when you have to interview disabled people who require this.

By October 2004 the physical changes that might be required should have been looked at. This will mean looking at the physical access to police stations for a range of disabled people including wheelchair users but also people with a visual impairment or a learning difficulty. Some issues are obvious like looking at the front entrance to see if there is a way of providing step free access with wider doors that are easy to open. However other issues should be considered like the signage, counter height and whether improvements could be made to lighting. The DRC would recommend that anyone considering improvements to physical access takes professional advice and trained access auditors are usually best placed to provide this.

The DRC would emphasise that these duties are only when you are providing services to members of the public or sections of the public so the court process itself for example would not be covered by this legislation and at present the duties would not apply in most situations where someone had been arrested, although it would be unwise to overlook the implications of the Human Rights Act.

The DRC has recently launched a major campaign to ensure that those providing services are aware of and able to act upon these duties. Further information can be obtained from our website [Open4All.org](http://Open4All.org) and I would strongly commend this to you.

### **DRC activity**

The DRC is working closely with the Police Service in a number of ways, to assist them to prepare for the implementation of Part 2 of the DDA from 1st October next year.

We have been working with the Police DDA steering group which is co-ordinated by the Home Office and includes within its membership the Association of Chief Police Officers, who are producing guidance for forces on what implementing the DDA will mean for them. The first general guidance document will be coming out later this month, to be followed by more specific guidance on particular issues later in the year and during next year.

We have also been looking at what training and awareness raising has been going on in forces. The training sub group of the DDA steering committee is considering undertaking a national training needs analysis in terms of getting forces up to speed on their responsibilities. However, another aspect that will have to be looked at is the accessibility of training in the police force and how this can be improved. This will be an area where much work needs to be done.

The DRC is encouraging the police service to see the inclusion of more disabled people within its ranks as an opportunity to create a more diverse workforce where disabled people are able to take a positive and active role.

As mentioned earlier the DRC are currently consulting on two statutory codes of practice, which we are producing,

and I would encourage you to read through those codes and give us your response. They are available on our website [www.drc-gb.org](http://www.drc-gb.org)

Finally, I should like to say a few words about enforcement. The DDA is civil not criminal law so disabled people can bring their own actions. The position of the DRC is that we hope we can ease the introduction of the new parts of the DDA without recourse to legal action. Our Helpline is there to help you as well as disabled people. My staff are also willing to help. We want to work with you to help you get it right but, of course, we have a duty to protect disabled people and we do have a range of legal powers available to us. As appropriate we will use them. I think the importance of conferences such as this is that it lessens the possibility we will need to use them except in test cases and that is the way we prefer it.

Thank you

Bert Massie

Keywords: Disability Discrimination Act ; Employment;  
Police service;

## **Disability and Policing**

### **Bert Massie: Speech at Police Federation of England and Wales Equality and Diversity Conference October 2003**

May I start by thanking you for inviting me to speak to you today? I would also like to congratulate the Police Federation on your success in enticing a Liverpool supporter into Old Trafford. Manchester United is, of course, the football club that recruited a goalkeeper with a disability. With the results my football team are getting at the moment I have not yet given up all hope of being called up for the first team.

I would like and to thank the Police Federation for holding this conference and for your efforts in ensuring the new laws are introduced into the police service in a spirit of co-operation. I appreciate your commitment to ensuring that together we make this Act work.

I recall some years ago making the case that there was no logical reason why disabled people should not be police officers, fire fighters or soldiers. The armed forces are still excluded but the other two will be covered by the Act from October 2004. The immediate objection was that which I suspect is in the minds of many of you today. I was challenged to explain how a wheelchair user could perform all the duties required of the uniformed services. It is an understandable question. If I was recruited as a police officer and attended a robbery, by the time I had parked my car, operated the wheelchair lift, got out of the vehicle, stored the wheelchair lift and closed the car door, the robbers would not only have left the scene of the crime, they would have laundered the money, invested in legitimate schemes and be relaxing in the Caribbean while living on the interest. So what is this new law about?

Before I deal with the legislation I should point out that the police service has been subject to the Disability Discrimination Act since 1996. In the area of employment the only difference is that it will apply to uniformed staff as well as civilian staff. The Disability Rights Commission has already supported disabled people bringing cases against police forces.

In many ways it is counter intuitive to suggest that disabled people can be police officers. I think one of the reasons for this is that many people have a rather narrow perception of what constitutes a disabled person. I suppose the typical image is somebody like myself who uses a wheelchair. Nobody knows exactly how many disabled people there are in this country. The best estimate has been supplied by the government who claim there are 8.5 million disabled people. If this figure seems high you should bear in mind that physical disability and many sensory impairments are correlated with age. The older we get a more likely we are to become disabled. It is estimated that fewer than 5 percent of disabled people use a wheelchair. The crucial issue to consider here is how do we determine who is disabled. A definition is contained within the DDA.

To be a disabled person within the meaning of the Act somebody must have "...a physical or mental impairment which has an effect on his or her ability to carry out normal day to day activities. That effect must be:

Substantial (that is, more than minor or trivial), and adverse, and long-term (that is, it has lasted all is likely to last for at least a year or for the rest of the life of the person affected).

Once somebody qualifies as disabled under the Act they are protected by its provisions for the rest of their life even

though they may no longer be disabled in a medical sense.

This definition is wider than many people think and explains some of the confusion around the Act. The life opportunities of disabled people can be limited by their impairments but in many cases the major problem is caused by the reaction of society to our impairments. I use a wheelchair. For some using a wheelchair would be seen as a life-restricting burden. For me it is the opposite. Without it I would be unable to leave my bed unaided. In getting me around the wheelchair has an enormous and positive impact on my life. The problem I face is inaccessible buildings that prevent me using them, the lack of parking facilities that mean I cannot park within reach of my destination, or even non-disabled people parking in bays reserved for disabled motorists. All these issues can be resolved if we as a society choose to do so.

But what of the case of a person with severe facial burns. They can walk and do physical activities yet they face discrimination because some people think that they could not employ such people because it would “put off” customers or members of the public. They are covered by the DDA and are considered as disabled. They face discrimination because of their impairment. Could such a person be a police officer? I ask, why not, apart from prejudice. Would the public refuse to co-operate with them? I doubt it. I can recall the days when shops said they could not employ people from ethnic minority communities because the public would not buy from them. It was nonsense then and remains nonsense now.

What about the person who used mental health services for at least a year when they were a student – are they disabled? According to the DDA they are. They might have fully recovered but there is ample evidence that

people who have used mental health services can face discrimination in employment for the rest of their lives.

Already we see the image of who is and is not a disabled person changing. It is not just about wheelchair users and many people who are disabled are fully able to be effective police officers.

I appreciate that policing is a demanding profession. So let me make this point as clearly as I can. There is nothing in the DDA that requires any employer, whether it be the police service or a supermarket, to employ anybody who cannot do the job. So my chance of becoming a police officer is not very high while there is still a requirement for officers to be physically fit.

Every job demands certain skills and abilities if people are to be able to perform it effectively. If there is a genuine occupational requirement for police officers to have certain abilities there is nothing in the Act that requires you to employ people who do not have those abilities. Of course, you need to be sure that the requirements you make are justified. If you seek skills you do not need but with the intention of excluding disabled people you are likely to fall foul of the law.

The way forward is fairly obvious. Look at your job descriptions and see whether they are still valid. If they are, leave them be or, if not, update them. Then assess disabled applicants fairly and if they can do the job treat them as you would any other applicant. If you think they cannot do the job there are other issues you should consider. Could they do the job if some reasonable adjustments are made? What, you might ask, are “reasonable adjustments”

It is a legalistic phrase for a simple concept. Is it possible to give support in the form of changing a working practice or by providing equipment to enable a person to do the

job? Let us consider a police officer who is injured in the line of duty or even when off duty playing football or involved in a road traffic accident. The DDA requires you to consider a number of issues before you consider dismissing them. Can they continue to do their current job? If yes, fine. If not, can the job be adapted in some way. This will depend on the extent of the injury and the resulting impairment and on the nature of the job. The TV bobby Dixon of Dock Green spent the latter years in the series never leaving the police station. The reason was that the actor Jack Warner had arthritis. Moving to the real world, could an officer who was out on patrol do a good policing job within the station and, if so, what support would they need? These are the type of questions you need to ask.

You also need to ensure that people are not disadvantaged when seeking promotion and that, in part, will depend on the training they receive. It is not unrealistic to imagine that some police officers have dyslexia and are covered by the Act. There are many coping mechanisms but they might require training material in a particular format. That is not expensive to provide. From October of next year qualification bodies will be subject to the Act. So will trade organisations. That will, of course, include the Police Federation.

Health and safety is of concern to us all. The Health and Safety at Work Act takes precedence over the DDA. However, I should add a word of caution. Health and safety should not be used as an excuse to remove officers from active service. Again, individual and sensitive assessment is the key. Blanket bans, which amount to direct discrimination, are not permitted. I think it is also important when undertaking an assessment on whether someone is fit for the job that the person undertaking the assessment is competent to do so. It sounds obvious but not every one has regarded it as such.

I hope that what I have said so far will have helped assure you that the DDA is not unreasonable. Nor does it impose excessive burdens. There is another myth about disabled people I would like to address. I spoke to a group of police officers recently and I was surprised by one question. The person concerned was focusing on the prospect of disabled people becoming police officers and taking the “easy” jobs within the force. His objection was that he thought the so-called “easy” jobs should be reserved for officers who became injured. While I can but admire the loyalty this officer extended to his colleagues, he missed the point on two issues.

The first is that disabled people are not seeking the easy or cushy jobs. They simply wish to be assessed on their merits without superstition or prejudice getting in the way. Disabled people know their own abilities and what we can and cannot do. Despite the way in which Liverpool Football Club are playing at the moment I do not expect to be invited to play for them. Blind people will not apply for jobs in which driving is an essential requirement. People with learning disabilities will not apply for jobs demanding high intellectual skills and abstract reasoning. If they did and they could not do the job, they would not survive your entrance procedures. But if a disabled person could do the job, why not hire them?

The second is that he assumed that injured officers should then be kept within the police service but should do the easy jobs. This of course depends on ones definition of easy, but surely the principle is that for a service to operate efficiently and effectively we need to put the right people in the right job, even if they need some training to reach full productivity. The job might be very demanding regardless of whether the person doing it is disabled. An obvious and current example is the Home Secretary who is the person responsible in Cabinet for the policing of this country. He is blind. At least three other members of the

Cabinet would qualify as disabled under the DDA and they all have very demanding jobs. Disabled people are not seeking cushy jobs. We only seek fairness and equality.

The Disability Rights Commission was created by Parliament to advise Government on the working of the Act and to ensure it works. We also provide financial and legal support to disabled people who have faced discrimination and need redress through the courts. Within two years we received almost 400 calls to our Helpline regarding issues related to the police. About 250 were concerned with employment matters but not all about discrimination. As well as assisting disabled people we also offer advice to employers and organisations and businesses that provide service to the public.

Although we do use the courts we much prefer preventing the discrimination taking place at all. We have received over 250 thousand enquires at our Helpline, have investigated over 6,000 case of alleged discrimination but bring only about 60 legal cases a year. We offer a great deal of guidance of how to interpret the Act and how to meet its provisions. Last month we published our draft Code of Practice covering the new provisions. It is available on our website at [www.drc-gb.org](http://www.drc-gb.org) . I hope you will look at it and let us have your comments. The Code will, when amended following consultation, be submitted to the Secretary of State. It will then be laid before Parliament and if approved Employment Tribunals will be obliged to use it. The Code does not lay down the law, only Parliament and the courts can do that but it does give the guidance that will help you avoid ending up at an Employment Tribunal. We therefore need to ensure it is as helpful and accurate as we can make it. We need your input for that, so I hope you will look at it.

This afternoon I have tried to simplify a complex piece of legislation. I have tried to remove some of the fear I

detect within the police service about how the Act will be implemented. I hope I leave you with the message that this Act is not about imposing on the police service people who cannot realistically be police officers but equally you should assume that there are disabled people who could be very effective police officers. It does require a different mindset, but once that is achieved implementing this Act should not be in any sense difficult. Finally, I would like to emphasize again that the role of the DRC is not to be your foe but your friend in helping you resolve any problems you encounter as you seek to make the police service more inclusive and help the DRC in achieving our vision of a society in which all disabled people are able to participate as equal citizens. Perhaps together we can work towards that vision.

Thank you,

Bert Massie  
23 October 2003

Keywords: Disability; Health & Safety; Police service

# **Opening speech at the British Council of Disabled Peoples 1st United Kingdom Disabled Peoples Parliament 4 October 2003**

## **Bert Massie**

I am delighted and honoured to be here today to open the UK's first Disabled People's Parliament.

I would like to begin by thanking the British Council of Disabled People for all your efforts in launching this important initiative and to thank you, the first members of the Parliament – disabled people who are passionate enough about the situation of the eight and a half million of us in this country – for committing yourselves to fighting in our name.

I want to speak today about a number of issues. The first is this momentous Parliament and the initiative of BCO DP in bringing it about.

Second, I want to say a few words about the proposed Single Equality Body that is likely to replace the DRC.

Finally, I want to say something about the work of the DRC and of the tasks that lay ahead of us and of you.

But let me start by saying that I think today is one of historic importance in the emancipation of disabled people and our determination to seize control of our own lives. Collectively we had won many battles but there are more to fight and we must ensure we have the structures to enable us to do so. This Parliament represents such a structure.

## **What is a Parliament?**

While I think the setting up of this Parliament is a marvellous achievement but it is open to two potential criticisms and I would like to address these and answer

them. The first is that because Members of the Parliament were elected from the members of only one organisation or of its member groups that the Parliament is unrepresentative. The second is that it is not a real Parliament because it cannot meet as regularly as people would wish.

Let me take the first criticism first. Our current national Parliament from which we draw so many of our ideas is a fairly recent creation.

If we look back over the history of this country you find that the Celtic tribes had chiefs but not much democracy. Rome had an emperor when it invaded Britannia. The Anglo-Saxons had their kings and the Normans were hardly into democracy. But the Normans did disagree with each other and this conflict led to the birth of some form of democracy.

The 1215 Magna Carta signed by King John was about rights for the barons not the people. His successor Henry 3rd also upset his barons. One of them was the Earl of Leicester, Simon de Montfort, who, like disabled people today, wanted a say in matters that affected him. He demanded that the King should not make decisions without consulting the barons. So, Henry set up an advisory council, which he quickly ignored, and that resulted in conflict. De Montfort and the King fought. De Montfort won this one but was injured and fought part of the battle from a cart which he used as a wheelchair. As this was for occupational reasons I assume it was paid for by Access to Work!

De Montfort then organised a new parliament. This met in 1265. As well as barons and leaders of the church, two representatives from each town were invited to attend and a small government of three men was formed.

Simon de Montfort came to a sticky end – the history of democracy in this country is pretty bloody. Nevertheless,

he set in train a process that continues to this day – ensuring rule by the people for the people. It began a long struggle as successive Kings and Queens tried to keep power to themselves while others tried to share it. One King, Charles 1, completely lost his head over the issue. But still few people could vote or get into parliament.

Moving forward to the nineteenth century, the great Reform Act of 1832 abolished some pocket boroughs and spread the franchise wider. But even after another two Reform Acts, by 1918 only 20% of the population had the vote. Although women were given the vote in 1918 they had to wait another ten years before they all got the vote and in the late 1960's the voting age was dropped to 18.

The point of all this is that while the current franchise of this Parliament is restricted, it is following in the footsteps of our national Parliament. I hope that as this Parliament grows it will extend the franchise to larger groups of disabled people so it becomes even more representative. But it will not be an easy process and you will need to evolve with care. But the wider the franchise of this Parliament is spread amongst disabled people, the greater will be its influence and we need it to be influential.

You have funding for this Parliament but, I understand, limited funding for future meetings. I hope you will be able to resolve this. But, again, you are following history. Traditionally, Parliament was only called when the King wanted some money. Originally it had no powers and could only talk. Indeed, the word Parliament has its origin in the Norman French word Parler, which means talk. Parliament had to fight for its powers and only really achieved dominance over the King following the so-called Bloodless Revolution of 1688.

So from this beginning it is possible for even greater things to grow and I wish you well in your endeavours. It is

an encouraging start.

The fundamental principle behind this Parliament is that disabled people should speak for ourselves. We must ask whether this critical principle will be part of the proposed Single Equality Commission.

### **Single Equality Body**

Many of you will have heard that the Government plans to create a Single Equality Commission to tackle issues of race, sex, disability, age, sexuality and religion and belief.

The DRC has got itself into hot water with some by not simply rolling over and saying "Great. Go ahead", as some others in the equality field have done.

We are pleased to see new legislation tackling discrimination on grounds of age, sexuality and religion and believe, as we did with disability, that laws should have bodies to enforce them. Many disabled people experience discrimination for reasons other than disability. A single Equality Commission could help address institutional discrimination in a comprehensive way. We need to prevent discrimination rather than put it right afterwards. But the DRC has been around for a mere three years. There is still so much to do to improve the law and to make sure people understand that disability is a human rights issue.

The new body must have the powers to serve disabled people. As well as having all the powers of the DRC, the DRC believes it should also be able to represent disabled people in human rights issues. Although the DRC has been able to act to influence the interpretation of the Lift and Handling Directive, we and the eventual SEB, need much stronger powers. We don't want some vague power such as being able to promote human rights because that is little more than a power to talk about them. I suspect this rather weak power is all we will be offered. We need

to be able to act to defend disabled people from abuse our of human rights.

Disabled people are underrepresented in public office and there are major barriers to them taking part. We have to change that if disabled people are to be part of forming public policy and if public policy is to reflect and support disability equality. The DRC does not oppose an SEB for the sake of it. If we can find the right structure, such as the federal model we have recommended, we will support it but it must have appropriate powers and we must ensure that the DRC's program to introduce new rights for disabled people in partnership with the Department for Work and Pensions is not derailed or delayed.

### **Nothing About Us Without Us**

Equally important is the fact that the Department of Trade and Industry's current plans give us no safeguards about the role that disabled people will play in the new commission. The spirit of this Parliament is disabled people speaking from their own experiences and representing the views and interests of other disabled people – the essence of democracy. This principle has to be at the heart of any new single Equality Commission.

As disabled people, we know how vital it is to have our voices heard; to be recognised as adults capable of making decisions about our own lives.

I believe, as I know all of you here do, in the phrase "nothing about us without us". We have a shared history of being treated like Victorian children – they were supposed to be seen and not heard. Many people still, who feel uncomfortable or embarrassed by those of us who, speak, behave or get about differently to what is supposed to be normal, still seem to think it would be better if disabled people were neither seen nor heard. We have to fight that. We can't do it through the law alone. We have to do it by

being seen and heard everywhere – in every workplace, in schools and colleges, in the media and in the places where decisions are made about how our country will be run. I would like to acknowledge the support we have received from Maria Eagle and her Secretary of State to ensure that the DRC's voice is heard on these issues when they are discussed in relation to the SEB.

## **About the Law and the DRC**

Most of you will know something about the DRC. It was created in 2000 to fight discrimination and work towards equality for disabled people. This past year, our focus has been education – as the gateway to opportunity for disabled people. Many disabled people have had a second-class education in the past and this has to change. We also want to see disabled and non-disabled children educated together where that is what they want.

With new legislation that came into force in September last year, we've helped disabled young people fight discrimination. Whenever we talk to young disabled people, they tell us that they expect to earn less, achieve less and to face greater struggles in life than their non-disabled friends. This has to change. I hope the Disabled People's Parliament will draw in younger disabled people and show them that they are valued and, despite ongoing struggles, the future has much to offer them.

Yesterday we launched our new campaign, Open 4 All, which gives warning to every organisation that provides a service to the public that they have to take steps to make themselves accessible to disabled people by October of next year.

We will spend the next six months talking to business and the public sector about what the law means to them and why they have a duty to stop shutting disabled people out of British life. From April next year, we'll shift the focus to

telling disabled people about the new rights they will have from next October. You can help us when the time comes to spread the word. We will be producing materials to support disabled people in getting their rights.

We can't directly support everyone who experiences discrimination – and we all know the law isn't as strong as it should be. We published a Legislative Review earlier in the year telling Government just what we wanted to see change. This includes rights for disabled people in transport, changes to the definition of who is disabled and introducing a positive duty on the public sector to promote equality. I was pleased that Maria Eagle gave me a real grilling over the implications of our recommendations. She had read them carefully and given them a great deal of thought. Obviously I hope she will accept them or as many as she can. If we want change we should expect to have to justify ourselves.

The public duty sounds like a technical thing but it could make an enormous difference. The Disability Discrimination Act relies on individual disabled people taking cases against organisation that discriminate against them. This is expensive and difficult and, as we know, the law has holes.

A public sector duty would mean that all public sector organisations, from the NHS to social services and housing departments, would have to take positive action to remove barriers to equality. They would have to report regularly on their progress.

A similar duty relating to race equality was introduced after the Stephen Lawrence inquiry, recognising that discrimination isn't about individual acts against individual people but about institutional discrimination that has to be tackled at an institutional level. Such a change in the law

could make a huge difference and the DRC is urging government to introduce this as soon as possible.

Obviously, our focus at the DRC is the Disability Discrimination Act – whatever its flaws, it is the law the DRC was set up to promote and enforce. However, we believe that the issues facing disabled people are far wider than their experiences in education, employment and goods and services.

For that reason, the DRC has concerned itself with issues such as establishing a right to independent living, proposed changes to the Mental Health Act, genetics and euthanasia – taking strong positions in the media and trying to combat the negative views of disabled people's lives.

I know that some disabled people think that the best thing to do with the DDA is to scrap it and replace it with a stronger law. I can understand that and I know that BCODP is preparing its own Bill. My own view is that there is little chance of the DDA being scrapped but that it can and will be improved. The proposed Government Disability Bill is a start but, inevitably, there will still be much to do. The problem, as we all know, is that it all takes so much time. We do need to move disability issues higher on the Government's agenda and ensure we use the laws and powers we already have.

The DRC values the work of disability organisations and works closely with them. We may have differences about how best to achieve change. We may work in different ways. However, we share a common vision and common principles. Many people here fought long and hard for a Disability Rights Commission and one thing that united us was the importance of having disabled people in charge of running it. This is a basic principle of the disability rights movement.

At the DRC, we have commissioners representing employers, service providers, trade unions and the disability world. This is important to give us links to all of the sectors of society that have the power to change things for disabled people. But just as important is the fact that 10 of our 15 commissioners are disabled people.

But what of the future? On 28 August of this year, as part of our contribution to the European Year of Disabled People we launched our GIANTS Exhibition at City Hall in London. It shows some of the history of disabled people over the last 150 years. It was an important date for many reasons.

In 1861 the American Civil War began. In 1863 President Lincoln, somewhat reluctantly, issued what became known as the Emancipation Proclamation that freed black Americans from slavery. One hundred years later, on 28 August 1963, before the Lincoln Memorial in Washington Martin Luther King gave his famous "I have a dream" speech. Five years later he told us he had seen the promised land and the next day he was assassinated. So what was that dream?

In many ways it was modest enough. He didn't call for revolution. He wanted former slaves and sons of former slave owners to sit together at the table of brotherhood. He dreamt of freedom and justice. He said "I have a dream that my four little children will one day live in a nation where they will not be judged by the colour of their skin but by the content of the character. I have a dream today!"

If King was with us today and we asked him to speak on disability I think he might say that he has another dream. A dream of a world in which disabled people are not judged by the shape of our bodies, or on the fear non disabled people have of mental health service users, or in

which people with learning disabilities are turned away from hotels and restaurants because of prejudice. He might dream of a world in which the physical barriers to buildings, transport and the environment exist no longer and disabled people do have the right to mobility and movement. He might dream of a world in which we automatically support disabled people to live in the community who should no longer fear of being shunted into residential homes against their wishes, without so much as a trial which we offer to even the most menial felon, and with no hope of parole.

King had his dream. We can have ours and we can make our dream come true. This Parliament, which I am proud to open today, is one more step to achieving that dream.

I hope this Parliament, your Parliament, will be a huge success; that it will be listened to by those in power. I hope it will raise the profile of disabled people; show government, the media, the public and the business community the contribution disabled people can and must make; and that it will be a base to support more disabled people to get involved in all aspects of public life – in disability politics in all its various forms and in mainstream public life. Whether that is on the board of a health trust or as a school governor, a councillor or an MP.

Let's live the dream. Thank you.

Bert Massie  
October 2003

Keywords: Disabled people's organisations; Disability Rights Commission; Representation; Single equality body