

# Disability Rights Commission

Learning lessons:  
What the DRC did  
not seek to do

# Contents

|   |                |
|---|----------------|
| <b>Executive summary</b>                                    | <b>Page 2</b>  |
| <b>Introduction</b>   | <b>Page 3</b>  |
| <b>General context</b>                                      | <b>Page 5</b>  |
| <b>DRC involvement in the EU and International arenas</b>   | <b>Page 9</b>  |
| <b>Thematic programmes</b>                                  | <b>Page 11</b> |
| <b>Casework in England and Wales</b>                        | <b>Page 13</b> |
| <b>Role of the DRC: competent or independent authority?</b> | <b>Page 16</b> |
| <b>Concluding remarks</b>                                   | <b>Page 18</b> |

# Executive summary

The Learning Narratives project contributes to the broad legacy strategy of the Disability Rights Commission. It considers what the DRC has learnt through its various activities since 2000 and focuses on specific activities or overarching themes where the DRC has had direct involvement.

Each narrative responds to questions such as 'why did we, the DRC, try to do what we did?', 'what worked?' and 'what didn't work and why?' and draws on a range of data sources, not least of which is the experience and expertise of DRC staff, both past and present.

This narrative provides the perspective of the DRC's Chief Executive, Bob Niven, on a number objectives and projects which the DRC reasonably consciously elected not to pursue. The narrative seeks to identify the main reasons for those decisions at the time as well as views thereafter on their consequences. The narrative concludes with some of the personal observations on the role of equality commissions and their interaction with equality movements.

# Introduction

Organisations may decide not to set objectives or undertake projects for a number of reasons: incompatibility with its values and aspirations; an unpromising trade-off between the gains in prospect, the likelihood of success and, broadly defined, the direct and opportunity costs of undertaking the task; and relative priority in conditions of limited resources.

This narrative addresses a number of the objectives and projects which the DRC reasonably consciously elected not to pursue. The narrative seeks to identify the main reasons for those decisions at the time as well as views thereafter on their consequences.

Unlike a number of the other DRC narratives, this note is not based on a comprehensive systematic taking of views on the issues or an earlier draft. Rather, it reflects comments from DRC colleagues, as well as in meetings of the Commission and Senior Management Team (SMT); at Open Forum meetings which I have held in the DRC's Offices towards the end of the DRC; and briefly at one of the last SMT meetings on the basis of an outline narrative. Nonetheless the risk remains that the narrative has been (unintentionally) coloured by the particular perspective of its author as DRC Chief Executive. And the narrative concludes with some personal observations of my own on the role of equality commissions and their interaction with equality movements.

This narrative does not cover every significant issue on which the DRC decided not to act or to do so only to a closely. Omissions include not going for continuous (as distinct from selective) high profile, above the line advertising campaigns, and not addressing disability issues as they connect with the other equality 'strands' (especially BME communities) until late in the DRC's life. In the former case, limited resources and

## Learning lessons: What the DRC did not seek to do

doubts about degree of impact were the main factors at work. On the latter, despite some early action, the DRC's main approach was not to differentiate between types of disabled people: the main stimuli to considering the other strands were the statutory equality duties and the approach of the CEHR. It can be argued that earlier sustained action on BME in particular would have helped to break down popular stereotypes of disabled people.

After describing the DRC's overall context, the narrative does however address:

- The DRC and benefit issues
- EU and international work
- Thematic programmes
- In-house casework in England and Wales
- Role of the DRC: combatant or independent authority?

# General context

Before this note turns to the specific issues, it is probably worth recalling some key features of the general context in which the DRC operated during its lifetime from April 2000 to September 2007. The organisation was named in its founding legislation as the Disability Rights Commission. Its four main statutory tasks were to work towards eliminating disability discrimination; to promote equal opportunities for disabled people; to identify and disseminate good practice; and to keep the relevant legislation under review. Within that framework, the DRC had a wide range of powers and functions.

Starting with an annual budget of £11 million, the DRC secured budget increases to £22 million in 2005-06. Staff numbers grew progressively to 205 full time equivalents over the same period. The path breaking Disability Discrimination Act (DDA) 1995, despite flaws, provided a largely comprehensive set of civil rights and obligations which were introduced in stages up to 2004 (with strong provisions in respect of employment as well as access to goods, services, facilities and premises). That Act was augmented by legislation in 2000 with similar provisions on education and by a further DDA in 2005 (both Acts were also implemented in stages, concluding in December 2006 with further powerful provisions on transport and the statutory Disability Equality Duty on public bodies).

In 2002, the Government made clear its intention to subsume the functions of the DRC (together with those of the Equal Opportunities Commission and Commission for Racial Equality) into a new, wide ranging single equality body: in due course this was named the Commission for Equality and Human Rights and, after some uncertainty, Government

## Learning lessons: What the DRC did not seek to do

decided the CEHR would come into operation from 1 October 2007 (thus also setting a clear end-date for the DRC). The processes to shape the legislation governing the CEHR and then to establish the new body were both problematic for the DRC. They absorbed a considerable amount of time and energy, initially in particular on the part of the Chairman and senior managers and then for a wider number of staff. The known end-date for the DRC provided it with a fixed, compressed planning horizon, although considerable effort was also put into providing the CEHR with proposals intended to ensure considerable continuity and priority for disability issues in the new Commission.

# The DRC and benefit issues

The DRC decided at a very early stage that it would not involve itself in individual benefit issues that fell outside the scope of the DDA. There was never any prospect of the DRC having either the resources or sufficiently extensive expertise to handle effectively the huge volume of such cases. Moreover there were other organisations and arrangements specialising in such matters, and DRC policy was to steer refer individuals with such cases (eg especially callers to the DRC Helpline) in those directions.

In general, despite the importance of benefits issues to many disabled people and sometimes disappointment that the DRC did not involve itself in individual cases, the DRC's policy in this area was widely understood and accepted. There was consensus that the DRC's core business with respect to rights was grounded in those in the DDA and that this should not be diluted. That is not to say many disabled people would not have preferred the DRC to provide support on benefit cases as well as on civil rights. But the DRC's choice of priorities was generally regarded as the right one.

By and large, and for similar reasons, the DRC additionally did not focus on the overall design and operation of benefit schemes except in so far as systematic discrimination against disabled people might be involved. A notable exception was the Labour Government's push in 2004-06 on welfare reform and in particular Incapacity Benefit (IB). This raised deep concerns among disabled people and potentially had major threatening implications for many in terms of income, well being and life chances more generally. A number of DRC Commissioners felt strongly about the

## Learning lessons: What the DRC did not seek to do

issues. Reforms under consideration in Government had a close link with labour market considerations (by this time, the DRC had embarked on a thematic programme to close the gaps in employment between disabled and non-disabled people). And a member of DRC staff together with the Chairman were among the experts in Britain on the issues, enabling the Commission to make what were widely regarded as timely, effective and well coordinated interventions (although, as on a number of matters, some disabled people's organisations would have liked to DRC to have been more overtly aggressively critical of Government thinking).

# DRC involvement in the EU and International arenas

The DRC participated reasonably extensively in relevant international conferences and EU fora, represented as appropriate by the Chairman and staff. Membership of the European Disability Forum sustained a steady flow of information on developments in the EU. International and EU-level activity enhanced the DRC's general reputation and standing; some countries (eg Malta and Poland) have expressed their appreciation of DRC advice and support; and the DRC itself gained some useful ideas and contacts.

Overall, however, the DRC did not give major priority to EU or other international arenas, in terms of time or staff resource.

The domestic agenda was judged to warrant a far higher priority. The second EU Directive under Article 13 had helpfully entrenched disability rights in employment in Community law. But this was adopted soon after the DRC came into existence, and over the rest of the DRC's life there was little prospect of further general EU legislation on disability rights (for example on access to goods and services etc. or education). In principle the EU Structural Funds might have proved a source of part-funding of DRC projects. However the DRC's domestic budget in itself was judged to be largely sufficient and the bureaucracy connected with the Funds is daunting.

The 2006 UN Convention on disability rights was undoubtedly a major step forward. However, the Whitehall lead Department on the Convention (the Department for

## Learning lessons: What the DRC did not seek to do

Work and Pensions) itself consulted closely with disabled people's organisation; the process was time-consuming; the text of the Convention was always promising; and there remains little prospect that the Convention will in fact become justiciable in the UK (as distinct from helpfully declaratory and requiring the UK Government to report periodically on progress in observing the terms of the Convention).

The general assessment is that the DRC's approach in this area was about right. Greater DRC involvement at EU level may however have led to stronger Community legislation on the transport rights of disabled people. More arguably, greater involvement might have accelerated progress on EU legislation on goods and services (although such draft legislation remains unlikely to see the light of day till 2008 at the earliest). International solidarity between disabled people and their organisations might also have been strengthened.

# Thematic programmes

From the outset, the DRC has focused on making a reality of disability rights legislation on the ground. The DDA and related legislation was introduced in successive stages and each of these provided the DRC with major, welcome opportunities to publicise and promote the forthcoming provisions, to prepare statutory Codes as well as guidance and other advice, to help launch each phase as it came in, to disseminate good practice and to use its legal powers in a targeted way.

However, towards the end of the span of its first three-year Strategic Plan, the DRC began to consider whether to move to a new strategy over time of 'closing the gaps' in sectors that are key for disabled people (education, employment, access & transport, and health & independent living). Such an approach offered the prospect of demonstrating tangible systematic progress (a series of ten-year expectations were set on levels of participation and positive outcomes). The approach was likely to have a larger popular appeal and give greater scope for media and related coverage. It also provided an opportunity for synthesising the overview and contacts provided by Commissioners with the analysis and delivery skills of staff.

To have adopted the fanatic approach fully would have required significant changes, particularly in organisational design of the DRC (moving from a largely functional to programmatic/sector structure) and in the necessary skills mix among staff (with a greater emphasis on influencing). Some moves were made in these directions, particularly by establishing new middle management posts focusing on each sector as well as steering groups comprising Commissioners and staff drawn from the range of functions

## Learning lessons: What the DRC did not seek to do

across the DRC. And some tangible gains were made in terms of measurable participation and outcomes as well as targeted projects.

However, that switch of strategies and change in arrangements was not carried through completely. The DRC's initial strategy connected with legislative reform still had several years to run in terms of statutory provisions actually coming into force (the final provisions only did so in December 2006) and DRC programmes to help make the new rights and obligations a reality on the ground throughout Britain. Not all DRC colleagues were immediately persuaded of the full value of the switch especially in some functions (including legal and the media) which had operated across the complete canvas of DRC responsibilities.

The onset of the CEHR played a particularly influential role. On the one hand, it encouraged the DRC to tackle a new and pretty wide range of targets in the knowledge that the Commission only had a limited lifespan. Without the CEHR it might have been that the DRC would have moved to the thematic approach two-three years later than such moves as it did actually make. On the other hand, the CEHR processes themselves increasingly absorbed significant levels of Commissioner as well as senior and other staff time and pretty much prevented the 'headroom' in time and switchable resource that a full-scale switch to thematics would have allowed. The switch would not have been conducted effectively and the DRC's other priorities (particularly the continuing work to implement the DDA) would have been damaged.

On the whole, the general assessment seems to be that DRC's approach of only a partial change was in the event the right one. But there is disappointment that circumstances did not permit a full-blown thematic approach and the opportunity to judge its impact.

# Casework in England and Wales

This was probably the most difficult and contentious internal organisational issue in the lifetime of the DRC.

Early in 2000, without consulting the DRC Chairman or Chief Executive, the then Minister for Disabled People announced to Parliament that the DRC would operate an in-house casework service. This service would act as a half-way house between enquiries and potential cases raised by callers to the Helpline and formal legal cases supported directly by the DRC.

There were a number of arguments in favour of such a service. And the DRC could assist directly in remedying injustices faced by individuals without it always being necessary to proceed to the Tribunals or Courts. The DRC would have direct contact with real instances of discrimination and disadvantage, and individual disabled people could feel a stronger sense of identification with the Commission. The service could act as a source of quantitative and qualitative information for the rest of the organisation, and there would be a degree of quality assurance in preparing those cases which did eventually receive direct DRC legal support.

In practice, while the advantages were secured to an extent, a number of downsides also emerged. In practice, in a majority of instances it was difficult to discern the added-value of DRC involvement as distinct from that by other, often more locally based organisations. Virtually no cases of strategic legal importance were passed on to the DRC legal service (strategic use of its legal powers was a top

## Learning lessons: What the DRC did not seek to do

priority for the Commission). There was little interface with the rest of the DRC (not least given the service's insistence on preserving the confidentiality of clients).

It became increasingly obvious that there was a dislocation between the ethos of casework work and the general thrust of DRC objectives more generally. After difficult deliberation it was decided to end in-house casework, initially across the DRC but eventually in England and Wales only given in particular the overall lack of other organisations in Scotland that would successfully perform the task.

There were criticisms at the time of the DRC (particularly from some disability organisations) who regretted the Commission's severing some of its direct contacts with individuals. It was also a pity that it did not prove possible to establish compensating DRC-funded 'partnership-building' arrangements at local level in parallel with the run down of the in-house service (this followed six or so months later). It is at the time of writing this note too early to tell the extent to which the CEHR will engage in in-house casework (it has designated a number of posts for 'strategic casework'). It could however prove the case that the DRC having ended its own in-house service other than in Scotland, results in a relative lack of disability expertise among CEHR caseworkers. Some staff involved felt a bit bruised by the process of change.

On the other hand, it is to be noted that the DRC's strategic legal work proceeded pretty much unaffected without any decline in the number of cases supported annually by DRC. The Helpline and Conciliation Service was able to absorb some of the work that would otherwise have been dealt with by caseworkers. And when contracts were agreed with suitable external partners (including the Law Centres Federation, IPSEA in the education sector and CABx in Wales), volumes of cases supported through these means

## Learning lessons: What the DRC did not seek to do

reached and exceeded previous in-house levels in a relatively short space of time. Adverse publicity, which had been quite limited in any case, abated and disability organisations were as prepared to work with the DRC after the change as beforehand. Staff and other resources freed up through ending casework were successfully redeployed on productive new activities, more in line with the DRC's overall approach, including transfer of expertise externally through DRC training and manuals as well as establishing legally-binding agreements with a range of organisations under Section 5 of the DRC Act.

# Role of the DRC: competent or independent authority?

The role of the Equality Commissions has been a contentious issue ever since the EOC and CRE were founded in the mid 1970s. At a very early stage in its existence, the DRC chose 'independence' and 'authoritativeness' as prime values. It also consciously decided it did not wish to be too closely associated with any of its main stakeholders – disabled people and their organisations; employers and service providers; and Government. To have become too closely associated with any of those, it was judged, would diminish the DRC's ability to have good relations with the full range of stakeholders and to be credible more generally.

The DRC also decided that, while it would use its legal powers extensively and vigorously, it would do so as one of the main means to achieving change rather than as its constant preferred way of proceeding.

In the opinion of the majority, it is felt that the DRC made the right choices here and for the right reasons. It is generally judged that the DRC has been a distinctly effective organisation, as indicated for example by the results of independently-conducted Opinion Formers Surveys, the DRC's reputation across the range of stakeholders, informal feedback and polling the views of the DRC staff. Legal work can be a powerful tool but only in the right circumstances, not in a blanket way. The DRC in fact supported many more cases centrally than did either the EOC or the CRE in their latter years. And to have embarked too early on such resource-

## Learning lessons: What the DRC did not seek to do

intensive and potentially risky exercises as Formal Investigations would have damaged the DRC's overall effectiveness and its reputation.

It is also argued, however, that the DRC's approach has led to its having a lower profile than would have been the case if it had been more overtly aggressive especially in its use of legal powers. It is argued that, if the DRC had undertaken a larger number of profile legal cases, this would have brought about greater compliance on the part of employers and providers as well as instilling greater confidence among disabled people to bring cases themselves. One consequence of the DRC's approach was that it only began to use its powers to conduct general Formal Investigations and to reach binding Section 5 agreements in the latter half of its existence. It can be argued that earlier and more extensive use of those powers would have had the same effects as greater recourse to legal cases.

# Concluding remarks

This narrative is ended with a personal conclusion. There is much in Britain that needs to be changed if the DRC's vision is to be realised of a society where all disabled people can participate fully as equal citizens. The effective bringing about of change requires constancy of purpose but also an ability to deploy different 'weapons' in different combinations according to the issue being addressed and the circumstances applying. The basic ingredients are raising awareness of the importance of the issue and why change is needed; supplying know-how and confidence to tackle the change; and applying sanctions to those who, despite being aware of the issue and how to tackle it, decline to do so (or even to try to find out what needs to be done). Lasting, widespread change also depends on a range of players carrying out their responsibilities, and it is of course very often employers, providers and Government that can effect the greatest change directly.

My own judgement therefore, though inevitably not totally objective or independent, is that the Commission did follow the best overall approach. But it is also perfectly understandable that some individual disabled people and their organisations, who of course want to see speedy and specific progress, should have felt from their own perspective that an even more aggressive and legally-based approach by the DRC would have paid dividends. The same clash of views arises in the contexts of the EOC and CRE (and seems likely to recur concerning the CEHR).

Perhaps the clash of views is inevitable. Or perhaps the better solution is for equality commissions to continue to aim to be independent and authoritative as their best overall strategy, combined with a (in our case, disability) movement that is

## Learning lessons: What the DRC did not seek to do

pretty united, well-resourced and able to keep up the pressure based wholly on the views and experience of disabled people. There is considerable academic and other evidence that progress on tackling discrimination and inequality is greatest where an effective independent public authority and an effective, assertive movement work in tandem.