

July 2012

## **Disability Equality Legislation in Northern Ireland - the need for change**

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The need for reform of the disability equality laws in Northern Ireland was the focus of a recent seminar organised by the Equality Commission for Northern Ireland. The event was opened by Junior Ministers in the Office of the First Minister and Deputy First Minister, Jonathan Bell and Jennifer McCann, and explored the Equality Commission's recommendations set out in *Strengthening Protection for Disabled People, Proposals for Reform*, which the Commission published in March 2012.

The Commission is calling for changes to address inconsistencies within the disability equality legislation and to strengthen the rights of disabled employees, customers, pupils in school and tenants against unlawful discrimination and a failure to make reasonable adjustments. The proposed changes would also give additional protection against discrimination for those who care for disabled people.

One key reason for the changes is to help harmonise and simplify the legislation; making it easier for disabled people to understand it and for employers and others to comply with their responsibilities under the legislation. There are, at present, not only inconsistencies between disability law and anti-discrimination law on other equality grounds, but also significant inconsistencies within the disability legislation itself.

In addition, the situation is now compounded by significant differences between disability equality law in Great Britain and Northern Ireland, following the implementation of the Equality Act 2010 in Great Britain. This causes difficulties for UK-wide employers who operate in both Northern Ireland and Great Britain and have to keep pace with different equality legislative frameworks between the two jurisdictions. It also presents difficulties for Northern Ireland employers and service providers who have previously relied on case law in Great Britain in order to help them interpret similar Northern Ireland disability equality law provisions.

In the Equality Commission's recent "*Equality Awareness Survey 2011*", more than three quarters of respondents (77%) agreed that Northern Ireland equality law should be strengthened to match those in Great Britain. The Commission considers that disabled people in Northern Ireland should not have less protection against disability discrimination either in employment or when accessing goods and services, compared to disabled individuals in other parts of the UK.

Rights which disabled people once had under the disability legislation had already been weakened due to the House of Lords decision in 2008 in the *Malcolm v London Borough of Lewisham* case. At the Commission's recent seminar, the keynote speaker was Catherine Casserley BL, a former senior legal advisor to the Disability Rights Commission and an expert legal advisor on disability law. She presented the findings in a legal briefing paper, commissioned by the Equality Commission, which concluded that the case has had a significant effect upon disabled people and disability law.

This strengthens the Commission's view that reform of the legislation is needed. The need for robust protection against disability discrimination is reinforced by the high level of complaints that the Equality Commission receives on this issue. For example, we received 1,112 enquiries from individuals alleging disability discrimination in the last reporting year (April 2011 –March 2012). We receive more complaints on disability than on any other equality ground.

One of the changes we propose is aimed at helping disabled people to gain employment by limiting pre-employment health enquiries. In particular, the Commission is recommending that employers are prohibited from asking questions about a job applicant's health or disability prior to making a job offer, except in certain specified circumstances.

The inclusion of such questions in application forms or medical questionnaires can deter disabled people from applying for a job. Prohibiting them (except in permitted circumstance) could also reduce discrimination by some employers who may be inclined to reject a disabled person's application once they become aware of the person's disability.

Employers could still ask health-related questions in certain circumstances, for example, in order to enquire about reasonable adjustments, or whether the applicant is able to undertake a function that is intrinsic to the job, or to monitor diversity in the workplace.

Another proposed change aims to support disabled children through the introduction of an additional duty on schools to provide auxiliary aids and services, where reasonable.

Not all disabled children in Northern Ireland have special educational needs. In such circumstances, the disabled child without an identified special educational need has no right to auxiliary aids and services under the disability equality legislation, even if they experience substantial disadvantage at school for a reason related to their disability.

Auxiliary aids and services could include, for example, extra equipment or support, such as an adapted computer keyboard.

The Equality Commission also wishes to strengthen protection against harassment so that disabled people could effectively challenge degrading or offensive treatment when they are accessing day-to-day goods and services. Unlike in Great Britain, there is no free-standing protection for people against harassment related to their disability when accessing goods and services, by private clubs or in schools. One disabled adult, for example, told us in a recent online survey that when she asked to use the swimming pool in a hotel, she was advised that “the hotel had a lot of influential corporate customers and that she may discourage them from using the pool.”

The Commission’s proposals are also designed to enable disabled people to live more independently in rented accommodation through greater duties on landlords.

Currently, landlords are not required to make disability-related alterations to the common parts of let residential premises, such as stairs and hallways, even if these are reasonable to make and would be paid for by the disabled tenant. We recommend changes that will mean that landlords will be required to follow a specific process if a disabled tenant requests an adjustment to a common part of residential premises; in circumstances where it is putting the disabled tenant at a substantial disadvantage.

The Commission also proposes strengthening protection for carers of disabled people or others who are discriminated against due to their association with a disabled person, as well as individuals who are wrongly perceived to be disabled. This would ensure that Northern Ireland law complies with the European Court of Justice (ECJ) case of *Coleman v Attridge Law*.

Finally, the Commission is seeking changes to the definition of disability so as to make it easier for disabled people to fall within the definition. In particular, it is recommending that the list of capacities (mobility, manual dexterity, etc) is removed in total from the definition of disability within the disability legislation. The Commission is also seeking a fundamental review of the definition of disability in order to reflect the social model of disability.

The Equality Commission considers that the proposed changes are in keeping with the UK government’s international obligations under the UNCRPD as well as the anticipated requirements of the draft European Commission Directive on the provision of goods and services.

We have engaged with disabled stakeholders, representative groups, employers and others to ascertain their views on the proposals. We have also raised disability law reform as a key action for the Northern Ireland Executive as part of its Disability Strategy, which is currently out for consultation. We will continue to proactively engage with all key stakeholders to raise awareness and secure support for our proposals.

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