

Disability Law Reform Survey

Summary of Key Findings

July 2012

Introduction

The Equality Commission is calling for changes to be made to the disability equality law in Northern Ireland so as to strengthen the protection for disabled people against discrimination and harassment and have published a set of [proposals](#).

In May 2012, the Commission undertook a small-scale on-line survey on disability law reform in Northern Ireland. The survey ran from 16 May to 18 June 2012 and was aimed at:

- obtaining actual examples of how weaknesses or gaps in current disability equality law impact on disabled people and;
- assessing levels of support for the Commission's specific proposals for disability law reform as set out in ["Strengthening Protection for Disabled People"](#).

The survey was divided into a number of short questions. The electronic survey was accessible via the Commission's website with links also sent directly to a number of relevant stakeholders; disability organisations, employer groups and MLA's. The Commission received 121 responses although some respondents did not respond to all questions.

The Commission has set out below a summary of key findings as well as a representative selection of the examples provided / comments received in relation to each of its recommendations.

Key Findings

- 78% of respondents agreed that the disability laws are in need of reform. 6% disagreed that reform was needed, while 17% said they “didn’t know”.
- The vast majority of respondents were in support of the Commission’s specific proposals for legislative reform. For example;
 - 81% agreed that the definition should reflect the social model of disability while 60% agreed that the list of capacities should be removed;
 - 97% of those who responded agreed that there should be stronger protection for disabled people against harassment outside employment;
 - 97% of those who responded agreed that there should be specific protection for people such as carers, friends or family members who are subject to discrimination or harassment because of their association, with a disabled person;
 - 83% of those who responded agreed that there should be protection for those who are wrongly perceived to be disabled;
 - 91% of those who responded agreed that disabled people should have protection from indirect discrimination and discrimination arising from disability (to remedy the impact of the House of Lords’ decision in *Malcolm*);

- 71% of those who responded agreed that employers should be prohibited from asking questions about a job applicant's health or disability prior to making a job offer (except in limited circumstances);
 - 98% of those who responded, agreed that the reasonable adjustment duty on schools should be extended to cover auxiliary aids and services;
 - 92% of those who responded agreed that disabled tenants who live in rented accommodation should be given additional protection in relation to the making of reasonable adjustments by landlords to the common parts of their property.
- Respondents to the survey also provided a number of real-life examples illustrating the degree to which gaps or weaknesses in the current law are impacting on their day to day lives across a range of areas. The majority of examples received were in relation to: why the law was in need of reform; harassment; the provision of auxiliary aids and services in schools; pre-employment questions; and discrimination due to association (e.g. carers).

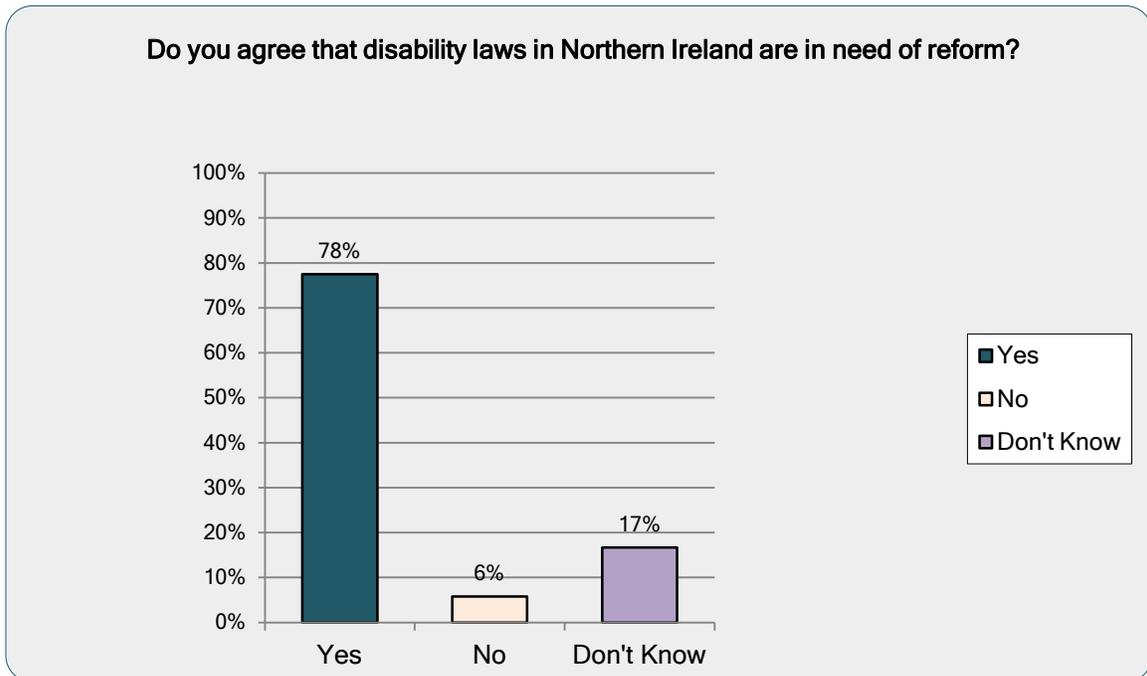
Note: Figures have been rounded and therefore may not sum to 100.

Survey Results

The Case for Reform

Respondents were asked whether they agreed that the disability equality laws in Northern Ireland were in need of reform and why they thought reform was needed.

78% of respondents agreed that the disability laws in Northern Ireland were in need of reform, 17% “didn’t know” if the law should be changed and 6% disagreed with the recommendation. Of those who responded, the majority felt that the law in Northern Ireland was too difficult to understand or should be amended to reflect the laws in Great Britain (GB).



a) Comments made in support of the recommendation included the following:

Confusing or complex

“A single piece of equality legislation.....would be easier for everyone to understand and use. The current legislation....is a minefield to understand therefore making it difficult for people to know if they have course for redress or not”.

“I find they are very complex and difficult to understand and navigate”.

“[Disability discrimination law] is a minefield and many will be put off using the law as they are unsure what rights they have and what issues are covered in disability legislation”.

“one person will tell you one thing then another will tell you [something] different”.

Keep pace with law in GB

“We need to keep pace with laws in GB and the law on disability needs to be simplified, particularly for smaller organizations”.

“the variation in legislation between NI and England/wales [sic] is confusing for people employed by the Crown Civil service but who live and work in N Ireland”.

“people in NI should [not] be treated any less favourably than people in GB”.

“Better to have a consistent UK-wide approach”.

b) No comments were made opposing the recommendation.

c) Other comments

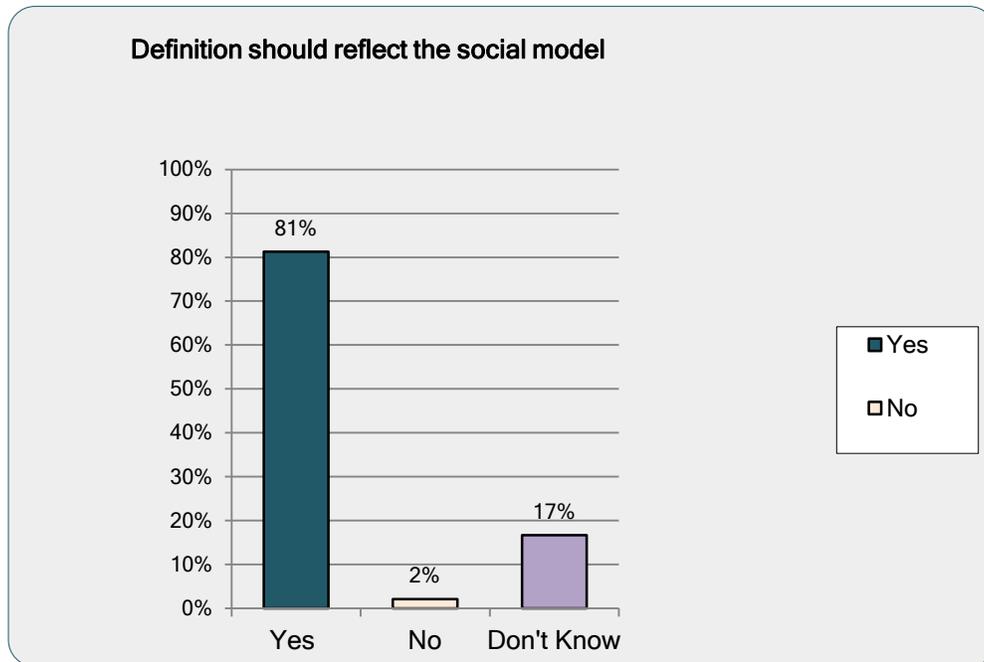
“[The] Malcolm case weakens the DDA dramatically. We need clearer direction, especially about pre-employment medical questions. We need [the] same legislation as GB because we can learn from the case law across [the] UK if it applies here, as was the case with DDA. We need consistent message to employers, especially those who operate in GB and NI”

“I think they always need to be reformed as circumstances change and they need to be kept up to date”.

Changing the definition of disability

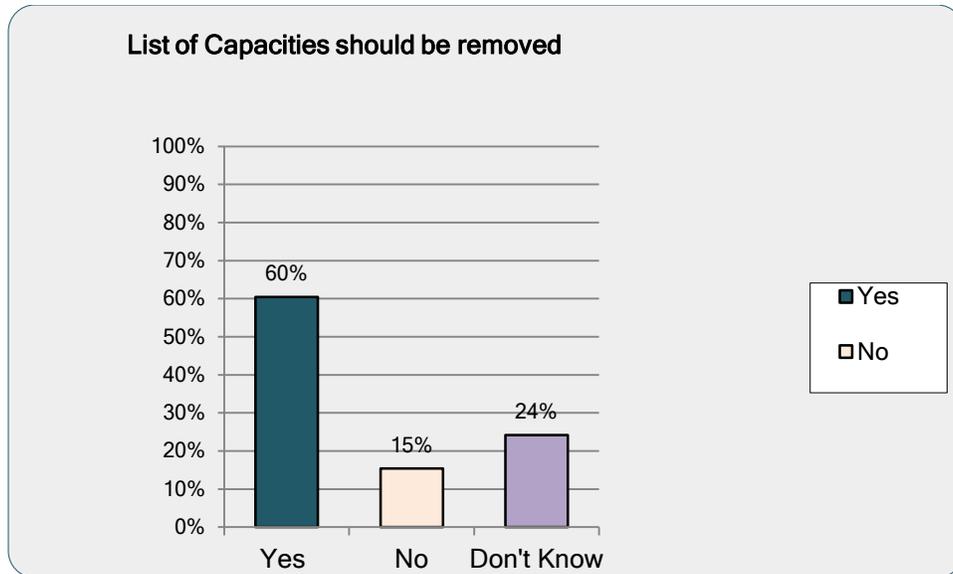
Respondents were asked whether they agreed that the definition of disability should be amended to reflect the social model of disability.

Of those who responded 81% felt that the definition of disability should reflect the social model of disability, 17% “didn’t know” while 2% disagreed with the recommendation.



Respondent were also asked whether they thought the list of capacities should be removed. 60% of respondents felt that the list of capacities should be removed, 24% didn’t know if the change should be made and 15% disagreed with the recommendation¹.

¹ Figures have been rounded and therefore may not sum to 100



a) Comments made in support of the recommendation included the following:

Social Model of Disability

“Many individuals with mental health problems...regularly experience problems with landlords, public bodies and service providers whose attitude and actions reflect their intolerance to MH [mental health] issues rather than a failure to change the external environment”.

“1 To change and up date the word/term 'Disability' to emphasise/include care. 2 To change and up date the name/term 'Disability Discrimination Act to reflect care. 3 The Disability Discrimination Act to be reviewed, revised, updated, consulted appropriately at all times for the benefit of all with care”

List of Capacities

“In current society there are many advances in diagnosis etc. and because of this many of the list of capacities is outdated”.

“Disability can have many aspects and a list would never be definitive. Rather than listing specific disability, the impact on an individual's daily living (and their family) and the level of support required should be considered”.

“Keep info on capacities for analytic purposes, but don't include/exclude based on such capacities list”.

b) Comments made not in support of the recommendation included:

“The list of capacities assisted employers in giving due consideration to issues relating to reasonable adjustments, attendance management and provided a degree of clarity on what constitutes disability (in terms of employment)”

c) Other comments:

“Reports should be requested from those who know the disabled individual - not only from G.P”

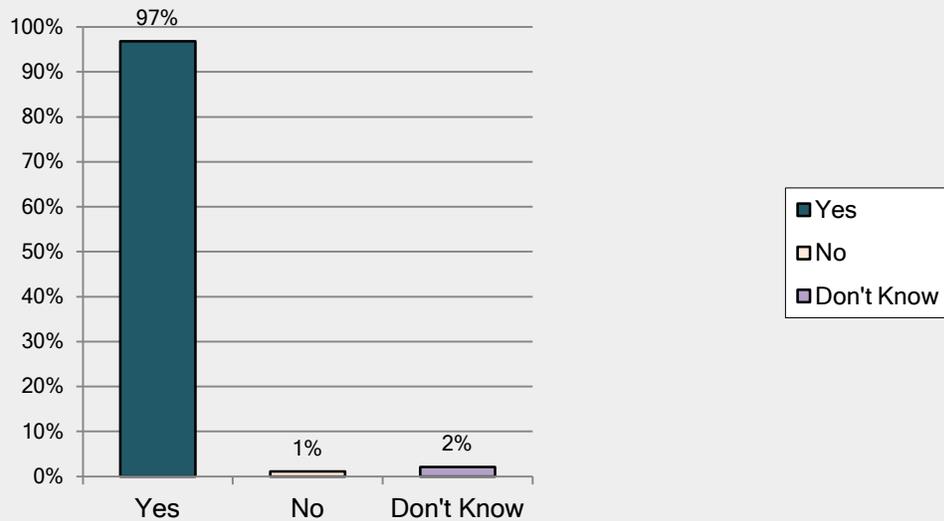
“Clarification of the clause about 'has or had' a disability - confusion currently when someone has previously had a disability and whether they fall into the definition”

Harassment

Respondents were asked if they agreed with the Commission’s recommendation that there should a change to the law to give disabled people *free standing* protection against harassment when accessing goods and services, or private clubs. This means it would be easier for a disabled person to make a claim against a service provider on the basis of harassment.

97% of those who responded to the survey agreed that there should be stronger protection for disabled people against harassment outside employment e.g. when accessing goods and services or in private clubs. 1% of respondents “didn’t know” if the change should be made and only 2% of respondents disagreed with the Commission’s recommendation.

Free-standing Protection from Harassment



a) Comments made in support of the recommendation included the following:

“people [are] being ridiculed on public transport because of their disability, ignored in shops and [their] places in queues overlooked”.

“Last year my 14 year old Autistic son set off the alarm going through the electronic scanner at [the airport} and was then treated appallingly because he could not comply with the instructions beings barked at him by one of the Security Personnel. I was being searched at the time and eventually had to raise my voice to bring some order to the situation”.

“[When I asked to use the pool in a hotel] I was advised that the hotel had a lot of influential corporate customers and "I may discourage them from using the pool”.

“when I was using the bus I was yelled at by the bus driver out of frustration. I had to get off at the wrong stop and make a long walk back into town. I tried not to feel embarrassed but I felt embarrassed”.

“[Commenting about a young person with dyspraxia who trying to use public transport]..... Drivers are unhelpful and unfriendly, often aggressive in tone. Driver has driven off because 'he did not run hard enough' to get the bus”.

“Personally, I have been harassed and bullied by bus drivers in the past”.

“Other patients with this same condition [neurological disorder] regularly suffer prejudice when attempting to access public transport as one of the symptoms is the appearance of inebriation often resulting in refusal to board public transport. Many have neither the capacity nor the energy to pursue complaints”.

b) Comments made not in support of the recommendation included:

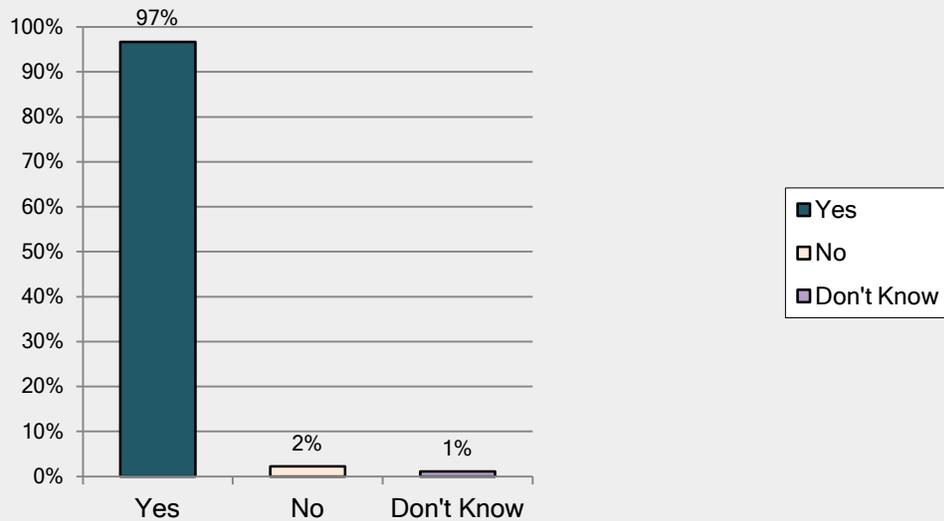
“In my experience, disabled people are treated with empathy and respect”.

Protection for those associated with disabled people

Respondents were asked if they agreed with the Commission’s recommendation that there should be change to the law to give carers of disabled people, or friends or family members, who are subjected to direct discrimination or harassment because of their association with a disabled person, protection under the law.

97% of those who responded agreed that there should be specific protection for people such as carers, friends or family members who are subject to discrimination or harassment because of their association with a disabled person. 2% of respondents “didn’t know” if the change should be made and only 1% of respondents disagreed with the recommendation.

Protection for those associated with a disabled person



a) Comments made in support of the recommendation included the following:

“I got harassed in my place of employment for attendance issues which were directly linked to my sons disability and eventually had to resign as they made it so difficult e.g. kept changing my hours and making me work hours that were unsuitable even after an agreement had already been in place that I could do hours that suited my family's needs”.

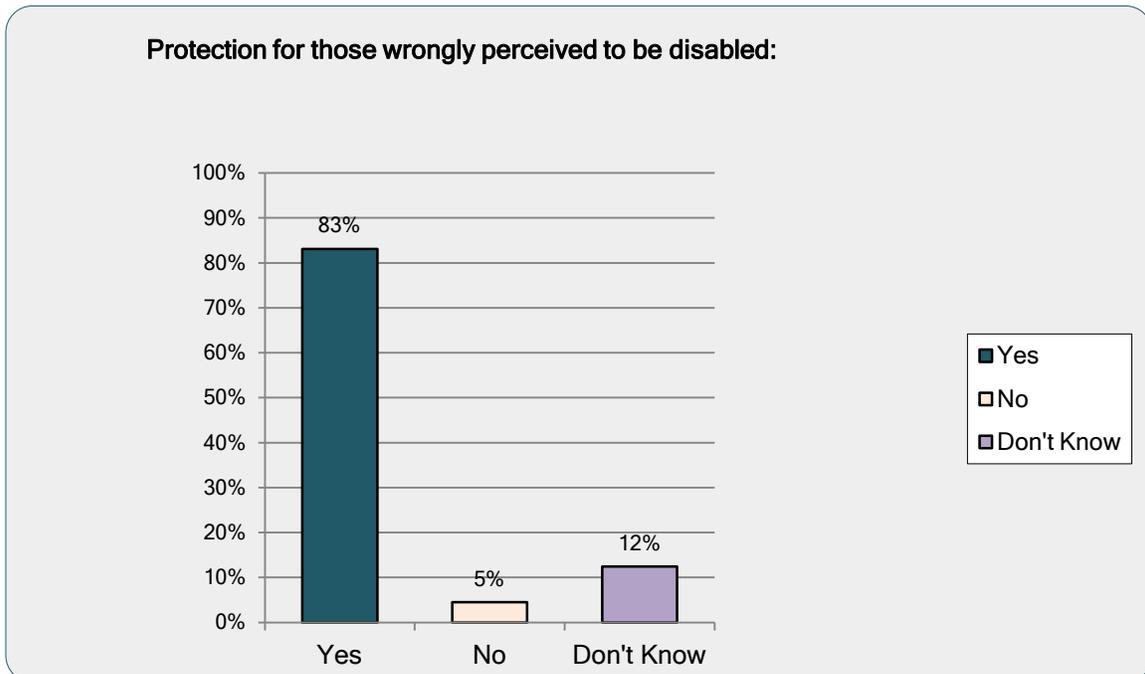
“I have been feeling under pressure and have difficulty taking the time I need off for appointments for my son who has ASD. I have not been able to take off extra parental leave to spend with my son. I feel that I have been discriminated against during to having to look after my disabled son. I have also been made to work my non-working day to make time up for appointments with my son”.

b) No comments were made opposing the recommendation.

Protection for those perceived to be disabled

Respondents were asked if they agreed with the Commission’s recommendation that there should be a change to the law to give protection to those who are wrongly perceived to be disabled. For example, a person who is not disabled and has been treated less favourably because they were perceived to be disabled, would have protection under the legislation (e.g. a person with short term depression).

83% of those who responded agreed that there should be protection for those believed to be disabled. 12% “didn’t know” if there needed to be additional protection in this area and 5% of those who responded disagreed with the recommendation.



a) Comments made in support of the recommendation included the following:

“I was with a friend in a hotel in Cheltenham when the bar person refused to serve my colleague and alleged he was drunk.he walked on his 'tip-toes' and spoke with a 'slurred' speech. The bar person assumed he was drunk!”.

“Mental health can be a temporary thing and not necessary a “disability””.

b) No comments were made opposing the recommendation.

c) Other comments

“Perhaps an 'official' ID card system for disabled people where their disability is not immediately obvious could be devised which legally entitles access to services like public transport and clearly supports the disabled person's rights?”

Re-strengthening Protections regarding disability related discrimination

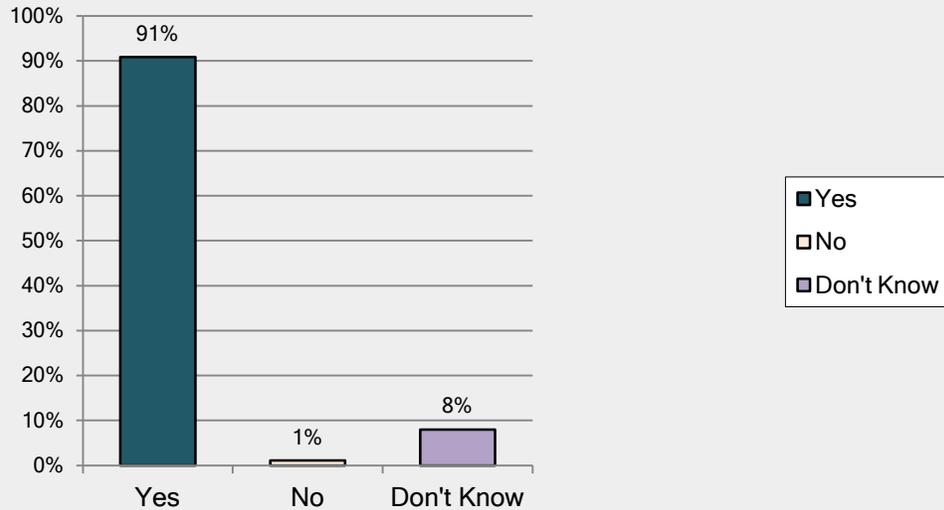
As a result of the House of Lords decision in *Malcolm*², there is now severely weakened protection for disabled people against indirect discrimination. This Equality Act 2010 in Great Britain sought to redress the impact of this decision. The Equality Commission is recommending similar changes are made to the law in NI, to remedy the effect of the *Malcolm* decision.

Respondents were asked if they agreed with the Commission’s recommendation that there should be a change to the law to give disabled people protection from indirect discrimination and discrimination arising from disability (a change which would remedy the impact of the decision in *Malcolm*).

91% of those who responded agreed that disabled people should have protection from indirect discrimination and discrimination arising from disability. 8% of people who responded did not know if the law should be changed and 1% disagreed with the recommendation.

² London Borough of Lewisham v Malcolm [2008] UKHL 43, House of Lords. - <http://www.bailii.org/uk/cases/UKHL/2008/43.html>

Re-strengthening Protections Regarding Disability Related Discrimination



a) Comments made in support of the recommendation included the following:

[A] person with physical disability had sick leave, when returned to work, their performance was marked "unsatisfactory". The person was told that anyone with same absence would have been marked the same as targets were missed, even though the absence was disability related - they were advised by barrister that case was weak due to Malcolm decision

b) No comments were made opposing the recommendation.

c) Other comments:

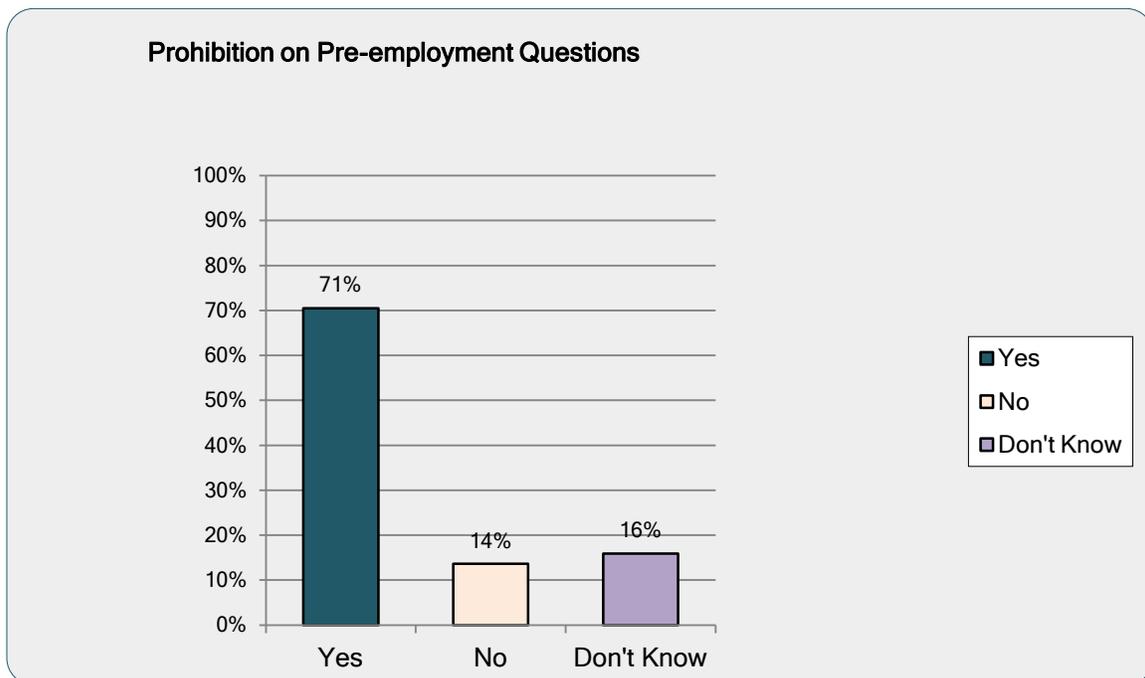
"Not aware of the details of the Malcolm case"

"Not familiar with the case"

Pre-Employment Questions

Respondents were asked if they agreed with the Commission’s proposal that there should be a change to the law so that questions by employers related to disability or health before a job offer is made are **prohibited**, except in specified circumstances (including asking such questions as part of the application process or during an interview). This change would also allow disabled people important that recruitment decisions can be challenged where appropriate.

71% of those who responded agreed that employers should be prohibited from asking questions about a job applicant’s health or disability prior to making a job offer (except in limited circumstances). 16% of respondents “didn’t know” if a change should be made, 14% of those who responded disagreed with the recommendation.



Figures rounded to 1 decimal places therefore may not sum to 100

a) Comments made in support of the recommendation included the following:

“I personally have had trouble gaining employment because of a past history with depression. I feel I have missed out on several jobs that I have been more than capable of performing and I have all appropriate qualifications, because

employers see depression in my past health history and worry I'll go on sick leave, even though it was 6+ years previous".

"as a person who interviews potential new recruits, the health questionnaire leaves people to assume that this will be a barrier and they do not pursue application.....The health questionnaire is seen as "No disabled need apply".

"I was subjected to difficult, patronising questions during an interview on my disability when the employer simply should have looked at my qualifications. I was capable of working alone and seeking access to work over any telephone calls but the interviewer underestimated my abilities"

b) Comments made not in support of the recommendation:

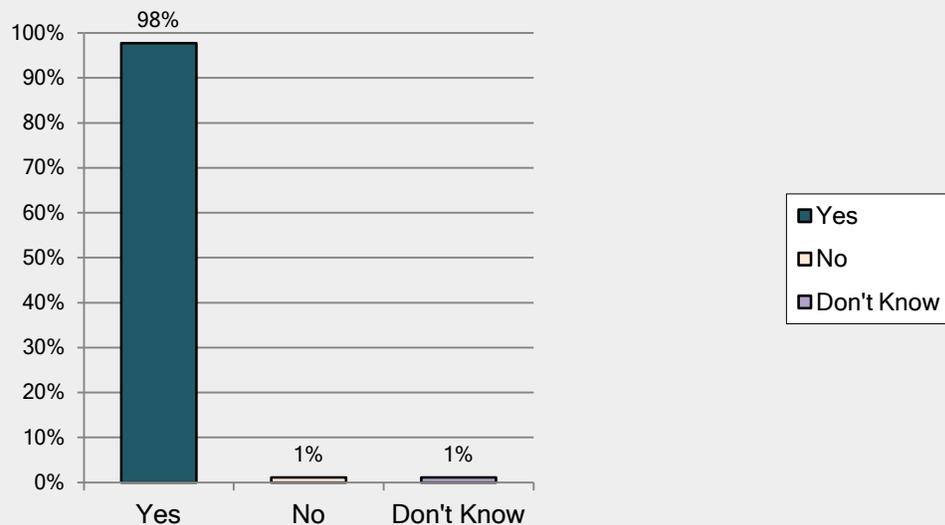
"health and disability have a major impact on employment so it is right that questions should be asked in order to establish the potential extent of this impact".

Schools: Auxiliary Aids and Services

Respondents were asked if they agreed with the Commission's recommendation that there should be a change to the law to place an additional duty on schools to provide auxiliary aids and services for disabled people, where reasonable. The changes, for example, will benefit disabled pupils who do not have special educational needs, but still require reasonable adjustments (in the form of auxiliary aids or services).

98% of those who responded to the survey, agreed that the reasonable adjustment duty on schools should be extended to cover auxiliary aids and services. 1% of respondents didn't know if the change should be made. The same number (1%) disagreed with the recommendation.

Disabled Pupils: Auxiliary Aids and Services



a) Comments made in support of the recommendation included the following:

“My son who had ASD has been disadvantaged in nursery with reduced hours as he didn't have a statement the nursery couldn't afford to provide him with a one to one assistant. [They said] he needed to be able to attend the nursery full time [but] a full time assistant that wasn't able to be provided”

“I did not have access to an interpreter whilst at school. I had to rely heavily on lip-reading alone which often put me into great difficulty during class time”.

“My son was without appropriate aid to help him in the classroom for 2 years while I fought the Education Board to get a Statement of educational needs. This made him significantly behind the rest of the class as he lacked the skills to organise himself and to work independently without any direction”.

b) No comments were made opposing the recommendation.

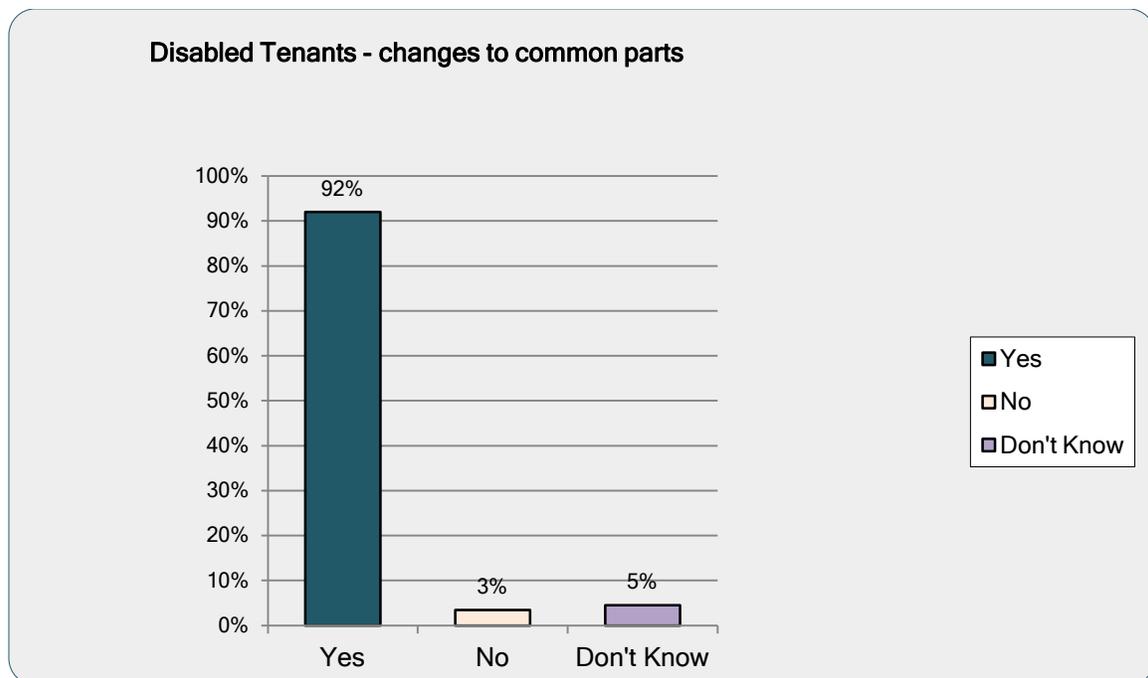
c) Other comments:

“As the Principal of a school, I know we are unable to fund the necessary adjustments needed due to the limited budgets we have, despite knowing how much they are needed!”

Rented Accommodation

Respondents were asked if they agreed with the Commission’s recommendation that disabled tenants who live in rented residential accommodation are given additional protection in relation to the making of reasonable adjustments by landlords to common parts (such as an entrance hall in a block of flats).

92% of those who responded agreed that that disabled tenants who live in rented accommodation should be given additional protection in relation to the making of reasonable adjustments by landlords to the common parts of their property. 5% “didn’t know” if a change should be made while 3% disagreed with the recommendation.



a) Comments made in support of the recommendation included the following:

There was one specific example where disabled people had been refused permission to make alterations to his rented property. However it was unclear from the example whether the requested changes were to be made to the common parts of the building.

“A patient suffering from a progressive and complex neuro-degenerative disorder living with his family in rented accommodation was subjected to unacceptable responses from his landlord landlord when asking for necessary and long overdue repairs to be carried out to the property. His requests were consistently ignored and when he complained he and his family were referred to as 'disability scroungers'. This type of verbal abuse was carried out over the phone and he therefore had no real recourse to a complaint procedure as he was unable to prove his case”

b) No comments were made opposing the recommendation.

Concluding Summary

The survey has indicated respondents’ strong support for the full range of the Commission’s proposals for the reform of disability equality laws – with almost 80% of respondents agreeing that disability laws are in need of reform.

The vast majority of respondents were in support of the Commission’s specific proposals for legislative reform. There were, for example, high levels of support (over 90% of those who responded) for stronger protection for disabled people against harassment outside employment; increased protection against discrimination for carers of disabled people; changes to remedy the impact of the House of Lords’ decision in *Malcolm*; a stronger duty on schools to provide auxiliary aids and services; and additional protection for disabled tenants.

The survey also provided a number of real-life examples illustrating the degree to which gaps or weaknesses in the current law are impacting on their day to day

lives across a range of areas. The majority of examples received were in relation to: why the law was in need of reform; harassment; the provision of auxiliary aids and services in schools; pre-employment questions; and discrimination due to association (e.g. carers).

Next Steps

The Commission has taken a number of proactive steps to raise awareness of its recommendations for reform of the disability equality legislation as set out in [“Strengthening Protection for Disabled People”](#).

For example, it has been engaging with disabled stakeholders, representative groups, trade unions and others to ascertain views on priority issues - including via a series of roundtable events and a [Disability Law Reform Seminar](#) in June 2012.

We have also commissioned an [expert legal briefing](#) on the impact of the House of Lords decision in the *Malcolm* case. The paper concludes that the decision has had a significant effect on disabled people and disability law in Northern Ireland.

The Commission used the results of this survey to make the case for reform at its seminar on disability law reform and will be including results from this survey in its response to the OFMDFM consultation on its draft Disability Strategy. We have raised disability law reform as a key action that the Executive can take as part of its disability Strategy.

The Commission will continue to proactively engage with a wide range of key stakeholders, including Assembly Committees, MLAs and representatives from the disability, trade union and business sector to raise awareness and secure support for its proposals.

Further Information

If you would like to discuss the findings of this survey or require further information on the Equality Commission's proposals for legislative reform, please contact Roisin Mallon on rmallon@equalityni.org or 028 90 500551.

Equality Commission for Northern Ireland

23 July 2012

Contact details:

Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast BT2 7DP

Tel: 028 90 500 600

Textphone: 028 90 500 589

Fax: 028 90 248 687

Email: information@equalityni.org

Web: www.equalityni.org