



Government Response
to the Joint Committee on Human Rights:
A Life Like Any Other?
Human Rights of Adults with
Learning Disabilities

*Presented to Parliament by the
Secretary of State for Health
by Command of Her Majesty
May 2008*



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Government Response to the Joint Committee on Human Rights: A Life Like Any Other? Human Rights of Adults with Learning Disabilities

Introduction

The Joint Committee on Human Rights (the Committee) published its report *A Life like Any Other? Human Rights of Adults with Learning Disabilities*¹ on 6 March 2008. This memorandum sets out the Government response to the conclusions and recommendations in that report.

The Government introduced the Human Rights Act to make rights drawn from the European Convention on Human Rights enforceable in our domestic Courts. The Government recognises that it is often the most vulnerable in our society such as people with learning disabilities who have the greatest need for protection and promotion of their rights under the Human Rights Act and Disability Discrimination legislation.

The committee's report includes 81 conclusions and recommendations for action by the Government, the Department of Health, the Ministry of Justice, the Office for Disability Issues, the Commission for Equality and Human Rights (CEHR), and local authorities and other public bodies. In this response, the recommendations are numbered according to the order they appear in pages 98-112 of the Committee's report. Some responses are grouped together where they respond to the same issue.

Adults with Learning Disabilities: The Key Issues

- **(1) We received evidence from across the UK, but most was from organisations and individuals in England. Consequently, this Report will focus largely on the policy framework in *Valuing People*². However, the human rights standards discussed in this Report are universal. We consider that most of the conclusions that can be drawn from the evidence are equally relevant to all four countries of the UK. Equally, we hope that our recommendations and conclusions will inform the development of policy and practice by each of the devolved administrations, as well as central Government. (Paragraph 31)**

The Government recognises that the conclusions of the Committee's report are relevant not just to England but to each of the Devolved Administrations. The Devolved Administrations welcome this report. Officials in those administrations are considering the relevant recommendations and will consider whether a separate response is required, in particular regarding action taken to promote equalities and human rights in each of the devolved jurisdictions. Furthermore, the Devolved Administrations recognise the report's significance and are taking into account its conclusions and recommendations in developing and delivering policy for adults with learning disabilities.

The UK has comprehensive legislation covering disability discrimination. Please note that references to discrimination legislation in this document apply to England, Wales and Scotland.

- **(2) In the light of the evidence which we received on the gap between the aims of *Valuing People* and the experience of adults with learning disabilities, which we consider below in Chapter 4, we are concerned that in *Valuing People Now* there appear to be few measurable targets for action nor precise proposals for monitoring progress on their achievement. (Paragraph 38)**

The Government notes the concerns of the Committee and will take their views into account in considering the response to the consultation on *Valuing People Now*³. The Government also undertakes to provide the Committee with a further response when it responds to that consultation.

¹HL Paper 40-1/HC73-1; <http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/40/40i.pdf>

²Department of Health, *Valuing People: A New strategy for Learning Disability for the 21st Century*, Cm 5086, March 2001.

³Department of Health, *Valuing People Now: From Progress to Transformation*, December 2007; http://www.dh.gov.uk/en/Consultations/Live-consultations/DH_081014.

- (3) We are pleased to note that the Government is committed to “fully consider and respond to the conclusions” of our Report in the course of formulating their priorities for 2008 – 2011. We expect the Government to give the recommendations and conclusions of our Report serious consideration during preparation of the final version of *Valuing People Now* and in setting its priorities for action for the next three years. We consider that *Valuing People Now* presents a valuable opportunity for the Department of Health to take a positive approach towards the promotion of the understanding and protection of the human rights of adults with learning disabilities. We recommend that, when redrafted after consultation, *Valuing People Now* should explicitly promote a “human rights based approach” to public authorities’ duties under the Human Rights Act; and should provide practical guidance for public authorities on the effective implementation of those duties. (Paragraph 40)

The Government notes the concerns of the Committee and undertakes to give the recommendations and conclusions in the Report serious consideration in the response to the consultation on *Valuing People Now*. The *Valuing People Now* delivery strategy will explicitly include a strand of work around promoting awareness of a human rights approach to *Valuing People Now*.

Why do Human Rights Matter?

- (4) We are disappointed that, at the start of the 21st century, almost ten years after the introduction of the Human Rights Act, and over a year since the introduction of the Disability Equality Duty, [the] evidence received convinces us that we need to emphasise that adults with learning disabilities have the same human rights as everyone else; and that they are entitled to freedom, respect, equality, dignity and autonomy in their everyday lives. (Paragraph 44)

The Government notes the concerns of the Committee. Whilst there has been much progress made in ensuring that adults with learning disabilities have the same human rights as everyone else, there is still more to be done. *Valuing People Now* set out the further progress that needs to be made to ensure that adults with learning disabilities are not only entitled to but achieve freedom, respect, equality, dignity and autonomy in their every day lives.

- (5) We recently made a number of recommendations to Government on “the transformative power of the Human Rights Act”. In plain English, we told the Government and others what we thought they needed to do to make the Human Rights Act work for everyone. We have called upon the Government, the Equality and Human Rights Commission, other public bodies and voluntary organisations to champion publicly how a better understanding of human rights principles could improve health and social care services. (Paragraph 53) We consider that when fulfilling this duty, the Equality and Human Rights Commission has a responsibility to engage proactively with those who are most vulnerable to breaches of their human rights and those who are less likely to be able to understand what human rights mean for them, including adults with learning disabilities. We recommend that the Commission take steps to ensure that adults with learning disabilities are aware of their rights under the Human Rights Act and the Disability Discrimination Act (as amended). (Paragraph 53)

The Government has committed to championing an understanding of how human rights principles can transform services. The Department of Health published in March last year *Human Rights in Healthcare – A Framework for Local Action*⁴. This sets out the relevance of human rights in healthcare and provides some practical examples of how NHS trusts can use a human rights based approach in the planning and delivery of public services.

⁴Department of Health, *Human Rights in Healthcare – A Framework for Local Action*; http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_073473.

The Committee may wish to note that the Government has recently updated the publication *A Guide to the Human Rights Act: A booklet for People with Learning Disabilities*⁵, which has taken into account the machinery of government and other changes. The Government has also taken the opportunity to update some of the language with the assistance of a specialist supplier of services for people with learning disabilities and low literacy. The updated version is available on the Ministry of Justice website <http://www.justice.gov.uk/guidance/humanrights.htm> and should shortly be available on the DirectGov website and also on the Office for Disability Issues website. We are currently exploring further options for disseminating the Guide and the Ministry of Justice will write separately to the Committee to update them on this. As the Government noted in previous correspondence with the Committee on the Guide, it attempts to relate the complex nature of the Articles of the European Convention on Human Rights to the day-to-day experience of its intended audience. It was not designed to provide precise legal definitions. However, we remain satisfied that it does provide an accurate and helpful account of the Human Rights Act.

- **(6) We recommend that the Minister for Care Services, the Office for Disability Issues and the Ministry of Justice together develop a strategy on how to help vulnerable people, including adults with learning disabilities, understand what the statutory duties in the Human Rights Act and the Disability Equality Duty mean for them. (Paragraph 54)**

The Department of Health undertakes to liaise with officials from the Ministry of Justice and Office for Disability Issues to ensure that existing campaigns around the Human Rights Act and Disability Discrimination Act take into account the needs of adults with learning disabilities.

In its response to the Disability Rights Commission (DRC) report the Government set out a series of actions about how we can address inequalities in healthcare – including making the Disability Equality Duty guidance relevant for people with learning disabilities.

See also response to 5.

- **(7) We consider that the statutory duties under the Disability Discrimination Act (as amended), and specifically, the Disability Equality Duty, complement the HRA. Together they form a powerful means of effecting positive change. If both are understood and implemented properly, they can underpin and promote the agenda set by the Government for improving the life chances of people with learning disabilities. (Paragraph 56)**

The Government agrees with the Committee's views.

- **(8) We are concerned that, one year after the introduction of the Disability Equality Duty, the evidence we have received suggests a clear distinction between formal compliance by public authorities and a failure to take a positive approach to the duty on the ground. (Paragraph 60) We recommend that the Office for Disability Issues work closely with the Equality and Human Rights Commission to champion publicly a broad, positive approach to the Disability Equality Duty. This should involve a strategy to ensure that other public bodies, and their staff, understand how the proactive implementation of the duty can improve service provision for adults with learning disabilities and others. (Paragraph 60)**

The Office for Disability Issues (ODI) works closely with the Equality and Human Rights Commission (EHRC) to monitor implementation of the Disability Equality Duty by public bodies and to promote its effective use. In particular the ODI supports Government Departments through a monthly working group, is placing articles highlighting effective practice in public sector publications and has commissioned Strathclyde Centre for Disability Research to undertake case study research. We expect findings from the case study research to be published in September and this will inform recommendations in Secretary of State Reports on progress towards disability equality across the public sector that will be published in December.

⁵Ministry of Justice, *A Guide to the Human Rights Act: A booklet for People with Learning Disabilities*, March 2008; <http://www.justice.gov.uk/docs/human-rights-act-learning-disabilities.pdf>

- **(9) We urge the Government to ensure that any amendment to existing positive equality duties should strengthen rather than undermine their effectiveness. (Paragraph 61)**

In the Government's consultation on the proposals for a new Equality Bill we made it clear that our intention was to strengthen, not undermine, the existing public sector duties. We are now considering the responses we received to that consultation and when, in due course, the Government's formal response is published, we hope that it will show that we have done just that.

UN Disability Rights Convention

- **(10) We agree that the UN Disability Rights Convention present a valuable opportunity to confirm that disabled people, including adults with learning disabilities, are entitled to full respect for their human rights. (Paragraph 66)**
- **(11) We welcome the Government's commitment to ratify the UN Disability Rights Convention. However, we are mystified by the reason given for the Government's delay in ratifying this treaty. (Paragraph 69)**
- **(12) We recommend that either the Government ratifies the UN Disability Rights Convention and its Optional Protocol without further delay, or provides clear and unambiguous details of any specific impediments to immediate ratification. We will continue to monitor progress towards ratification. We will be deeply concerned if the Government does not meet the goal that the Minister for Disabled People has set, namely, ratification before the end of 2008. (Paragraph 70).**

Joint response to 10, 11 and 12

The Government welcomes the Committee's acknowledgement that the UN Convention on Disability Rights is a valuable opportunity to confirm that disabled people, including adults with learning disabilities, are entitled to full respect for their human rights, and the Committee's recognition of the Government's commitment to ratifying the Convention.

The UK already has comprehensive legislation covering disability discrimination. The Government is also moving forward in other areas, for example, through the recently published Independent Living Strategy⁶; new measures to strengthen the protection of vulnerable older people in the care system; the recently published housing strategy for an ageing population "Lifetime homes, lifetime neighbourhoods"⁷; the concordat *Putting People First*⁸ with an additional £520 million over three years for the transformation of social care and introduction of personal budgets; and the *Aiming High for Disabled Children*⁹ programme, which is supported by £430m of additional investment over 2008-11 with further funding available to Primary Care Trusts, and aims to transform short-break services for disabled children and their families, improve transition between child and adulthood for disabled young people, and pilot measures to improve accessible childcare places for parents with disabled children.

The Government recognises that progress towards ratification has not been as fast as the Committee and many disabled people would like, but the UK does not ratify any international treaty until it is in a position to ensure that it can implement the provisions and therefore comply with its obligations. In addition, the European Community is, for the first time, a party to an international Human Rights Convention and this will inevitably affect the ratification timetable. Given the duty on Member States to cooperate with the Community the UK would wish to take into account the European Commission's proposal for Community Conclusion of the Convention which is still awaited.

⁶Office for Disability Issues, *Independent Living: A cross-government strategy about independent living for disabled people*, March 2008; <http://www.officefordisability.gov.uk/docs/ilr-summary.pdf>

⁷<http://www.communities.gov.uk/publications/housing/lifetimehomesneighbourhoods>

⁸Department of Health, *Putting People first: a shared vision and commitment to the transformation of adult social care*, December 2007; http://www.cpa.org.uk/cpa/putting_people_first.pdf

⁹*Aiming High for Disabled Children 2007*; http://www.hm-treasury.gov.uk/media/C/2/cyp_disabledchildren180507.pdf

The Committee will be aware that Article 33 of the Convention on Disability Rights is an unusual provision in UN Human Rights Conventions. Article 33 requires States Parties to the Convention to establish national monitoring arrangements, and the Government has wished to properly consult the Equality and Human Rights Commission and the Devolved Administrations about these arrangements. These consultations are continuing.

Ratification will be in respect of the United Kingdom of Great Britain and Northern Ireland. Part of this process has required the Devolved Administrations and Government Departments to check their legislation, policies, practices and procedures against the Convention's provisions. This has inevitably taken some time. However, this phase of the work is now over and we are considering carefully the emerging findings.

The current position is that the Ministry of Defence has indicated that there is a need to enter a reservation in respect of service in the armed forces, consistent with the provisions of the Disability Discrimination Act 1995 (as amended) and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. Service in any of the naval, military or air forces of the Crown are excluded from the Disability Discrimination Act's employment provisions to preserve their combat effectiveness. The Department for Children, Schools and Families has indicated that there is a need to recognise that the general education system in the UK includes a range of provision, including mainstream and special schools which will require an interpretative declaration, and that there will also need to be a reservation in respect of disabled children whose needs are best met through specialist provision, which may be some way from their home. The Home Office has indicated that there may be a need to enter one or more reservations or declarations in respect of immigration, nationality and citizenship.

There are also a number of areas where we are continuing to explore whether there are any compatibility issues which may result in the need for an interpretative declaration or reservation. These are: measures relating to the exercise of legal capacity; aspects of mental health legislation; choice of place of residence; and cultural services (interpretive measures).

With regard to the Optional Protocol, the Government is aware of the importance that many disabled people and the Committee attach to this issue. The Government is carefully considering its position as part of the Convention ratification process in the light of the ongoing review by the Ministry of Justice of a similar Optional Protocol relating to the Convention on the Elimination of all Forms of Discrimination against Women.

- **(13) We welcome the commitment expressed by the Minister for Care Services and the Minister for Disabled People, to the principle of independent living. We await the results of the Government's Independent Living Review, with interest. We recommend that the Government consider the outcomes of that review, and the need for any further policy or legislative change, as part of their commitment to review the UK's domestic compliance with the UN Disability Rights Convention. (Paragraph 77)**

Following the Independent Living Review the Government published its five year Independent Living Strategy on 3 March 2008¹⁰. The Strategy makes a number of new policy commitments, including a commitment to monitor progress and review the need for legislation if sufficient progress is not made.

Living with a Learning Disability

- **(14) We recommend that the Department of Health revisit this issue [of how the Government can support adults with learning disabilities to form relationships] in their redrafted *Valuing People Now*, in light of the evidence we have received. (Paragraph 88)**

¹⁰Office for Disability Issues, *Independent Living: A crosss-government strategy about independent living for disabled people*, March 2008.

The Government recognises the importance of personal relationships to people with learning disabilities. However, it does not believe that fostering such relationships is explicitly a role for central government. Through transforming services in a personalised way, we will enable people to have normal lives and strengthen personal relationships. As part of the consultation on *Valuing People Now*, the National Director explicitly flagged this issue and asked for advice and comments from the public on how to approach this. We will consider this further in the response to the *Valuing People Now* consultation.

- **(15) We are concerned that the experiences communicated to us by adults with learning disabilities, their families and supporters appear to reflect the findings of the last National Survey, that adults with learning disabilities are more likely than other people to suffer from social exclusion, poverty and isolation. (Paragraph 98)**

The Department of Health will consider this further in the response to the *Valuing People Now* consultation. It will also consider how this evidence will feed into their Secretary of State's Report on progress towards disability equality due in December.

The Government has prioritised people with learning disabilities through the work of the Social Exclusion Task Force in driving delivery of the cross-government Socially Excluded Adults PSA (PSA 16). The PSA aims to increase the proportion of four socially excluded groups in employment and in settled accommodation; adults with learning disabilities known to councils are one of the target groups.

- **(16) We are concerned by the evidence that the framework for improving the lives of adults with learning disabilities does not appear to have had much impact in Government departments other than the Department of Health or the wider public sector; and that the impact of *Valuing People* on the experiences of adults with learning disabilities in their dealings with local authorities and individual service providers has been so patchy. (Paragraph 104)**

Both *Valuing People Now* and the Independent Living Strategy recognise that the key priorities for disabled people, including those with learning disabilities are not just around social care, they include wider mainstream services such as access to housing, employment, health and transport.

Valuing People Now reflected the views of disabled people that despite the progress achieved under *Valuing People*, for many people little has changed and delivery has been patchy. The biggest challenge is in making sure delivery happens across England. The response to the consultation on *Valuing People Now* will set out the next steps for both policy and delivery.

- **(17) We were dismayed to hear the Minister for Care Services describe the National Director for Learning Disabilities as a “lone-ranger” on mainstreaming learning disabilities, rights and policy even within the Department of Health. We are extremely concerned that the Department, which has responsibility for cross-Government policy on learning disability, has failed to take seriously access to mainstream services for adults with learning disabilities, despite the existence of its statutory duties under the Disability Discrimination Act (as amended), the Disability Equality Duty and the Human Rights Act. (Paragraph 105)**

The Department of Health recognises that more needs to be done to improve access to NHS services for people with learning disabilities. That is why healthcare is seen as one of the key priorities within *Valuing People Now*.

The Department of Health has set up a steering group of senior officials, chaired by the Director for Primary Care, responsible for driving progress on '*Promoting Equality*'¹¹, the Department's response to the Disability Rights Commission report. This steering group brings together not just the National Director for Learning Disabilities, but senior Departmental officials responsible for primary care, PCT commissioning, mental health and workforce issues, together with representatives from the Commission for Equality and Human Rights. The steering group is:

¹¹ *Promoting Equality*; http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_0_72955.

- sponsoring a programme of work to support wider implementation of annual health checks for people with learning disabilities
- ensuring that we embed more deeply within PCT commissioning an understanding of how to meet the needs of people with learning disabilities and how to involve them in commissioning and reviewing services, in particular through sponsoring World Class Commissioning ‘exemplar sites’ with a specific focus on learning disabilities
- overseeing work with professional, regulatory and educational bodies to address understanding of learning disability in education and training for GPs, nurses and other health staff
- working within the Department to improve the way that we evaluate key health initiatives for their impact on people with learning disabilities
- helping develop a more coordinated approach to improving collection and management of information about health needs, services and health outcomes for people with learning disabilities and mental health problems – and supporting a more coordinated approach to performance monitoring.

The Government will consider what further action needs to be taken, not only in the response to *Valuing People Now* but also its response to the Independent Inquiry and the Darzi Review.

- **(18) We welcome the Government’s recognition that further work needs to be done to implement policy effectively, so as to support the rights of adults with learning disabilities as individuals. We also welcome the Minister’s frank acknowledgement that more pressure needs to be placed on both central and local Government to deliver the policy of *Valuing People*. (Paragraph 108)**

The Government notes the Committee’s observations.

- **(19) We are concerned that the National Co-Director for Learning Disabilities and the Government have been searching for “levers” to implement a policy designed to ensure that adults with learning disabilities can live their lives in a way which promotes dignity and respect for their rights. We are particularly concerned that the National Co-Director did not appear to consider that public authorities’ duties under the Human Rights Act would hold much sway. We reiterate our concern that the Department of Health and other Government departments should be proactive in promoting a positive approach to the Human Rights Act and to the Disability Equality Duty. We see the value of using these obligations to support or explain a particular policy choice as a “lever” for implementation. However, this should not undermine the binding nature of these duties. (Paragraph 109)**

The Disability Discrimination Act (2005) set out the new obligations on public authorities specifically in order that their response might be tailored as appropriate to their individual circumstance. That said, the Department has issued practical guidance on how NHS organisations might produce a Disability Equality Scheme that sets out how they will meet their statutory duty to promote disability equality.

Within the Department of Health, we have established tools for policy makers to use in the early stages of policy development to assess the impact the policy may have on equality issues, including disability. To underpin this, equality impact assessment training is being rolled out across the Department to all relevant staff. To date some 500 (out of some 2,400 total staff) have received the training.

Both NHS organisations and local authorities have the same public sector duties towards disability equality as the Department. However, to help the NHS in meeting these duties the Department has published *‘Creating a Disability Equality Scheme: a Practical Guide for the NHS’*¹² (October 2006), which provides guidance on issues such as involving disabled people, mapping services, and assessing policies for disability issues.

¹²Department of Health, *Creating a Disability Equality Scheme: a Practical Guide for the NHS*; http://www.dh.gov.uk/en/Publicationsandstatistics/PublicationsPolicyAndGuidance/DH_4_139666.

The Department will shortly be publishing specific guidance for the NHS on applying the Disability Equality Duty in relation to learning disabilities.

As part of the action plan for delivery of the Department's revised single equality scheme, we are strengthening governance, accountability and assurance arrangements for all aspects of the equality duties through the health and social care system. We will also set out new arrangements within DH to secure ongoing expert advice and engagement through third sector organisations working with disabled service users and carers.

The Department of Health has already published a framework *Human Rights in Healthcare – A Framework for Local Action*, which sets out the relevance and benefits of human rights in healthcare and provides some practical examples of how NHS Trusts could use a human rights based approach in the planning and delivery of public services. The framework was launched by the Minister of State for Health Services in March 2007 and then publicised in the NHS.

In addition, the Ministry of Justice has distributed two publications “Making Sense of Human Rights: A Short Introduction” and “Human Rights: Human Lives – A Handbook for Public Authorities”¹³ widely across the NHS and social care and also hosted a number of high profile conferences on human rights in public services.

- **(20) Difficult questions about allocation of resources may be involved when deciding whether to provide [funding for] support in specific cases. However, we consider these questions must be answered within the context of the legal obligations of local authorities and other public authorities, to respect the dignity and rights of service users. Local authorities must act in accordance with the Disability Equality Duty. (Paragraph 116)**

See response to 19.

- **(21) We are deeply concerned about the Government's negative response to our recommendations on the need for an express positive human rights duty for public authorities. The creation of a positive duty to respect human rights would help kick-start a change of attitude to the role of the Human Rights Act and to rights more generally. We doubt that, at least in the short term, oversight by the Equality and Human Rights Commission will encourage individual authorities to take a more proactive approach. On the other hand, witnesses to this inquiry, including the Minister for Care Services and the Minister for Disabled People, stressed their view that the potential impact of the Disability Equality Duty will be to change fundamentally the way that public authorities look at disability rights. We remain persuaded that the same is true of positive duties and the Human Rights Act. We reiterate our recommendation that the Government consider the introduction of an express positive duty on the public authorities to promote respect for human rights, where the European Convention on Human Rights imposes a positive obligation on the State. (Paragraph 117)**

Section 6 of the Human Rights Act makes explicit that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. In addition, section 1(d) of the Equality Act 2006 tasks the Equality and Human Rights Commission with encouraging public authorities to comply with section 6 of the Human Rights Act. Therefore the Government is not persuaded that there is a need for additional legislation.

¹³<http://www.justice.gov.uk/guidance/humanrights.htm>

- **(22) We strongly recommend that guidance to local councils should remind them that decisions about funding must be taken in a way which is compatible with the Disability Equality Duty and the Human Rights Act. We recommend that the Government rewrite its Guidance, including *Fair Access to Care*, to ensure it provides clear, straightforward and accessible examples of a human rights based approach, explains how social care funding decisions could lead to a breach of Convention rights and sets out how to comply proactively with the Disability Equality Duty. (Paragraph 121)**

The Minister for Care Services has asked the Commission for Social Care Inspection to undertake a fundamental review of social care eligibility criteria and report their conclusions by the autumn. The Commission is considering both the national bandings and the inconsistent way local authorities are making decisions about who is eligible for support.

- **(23) We agree with our witnesses that one of the most distressing and worrying things about the investigation by the Healthcare Commission and CSCI into the treatment of people with learning disabilities in Cornwall was that “many of the staff did not believe and understand that what they were doing was wrong”. This episode provides a most harrowing example of how a lack of awareness of the rights of people with learning disabilities can have a devastating effect, leading to situations where the right to be treated with respect for private life is ignored (Article 8 ECHR), and the rights to life and to be free from inhuman and degrading treatment are endangered (Articles 2 and 3 ECHR). (Paragraph 127)**

The Government notes the concerns of the Committee and agrees that an understanding and awareness of the rights of people with learning disabilities is critical. That is why under the leadership of the Promoting Equality steering group, we are working with the EHRC and with professional, regulatory and educational bodies to improve the way that learning disability is addressed in undergraduate and postgraduate curricula.

- **(24) We agree that taking a human rights based approach to service provision could contribute to reversing negative attitudes, assumptions and stereotypes. We again stress that the Department of Health and the Office for Disability Issues should take a lead in creating a positive approach to the implementation of both the Human Rights Act 1998 and the Disability Equality Duty. However, “taking a human rights based approach” means more than using the appropriate language in policy documents or in statements to parliamentary committees. A proactive and practical approach to the implementation of individual rights for people with learning disabilities is needed to replace the existing culture, which has allowed society to “dehumanise” people with learning disabilities for centuries. (Paragraph 133)**

See the response to 21.

In addition, the Department of Health is currently working with the British Institute of Human Rights and five NHS Trusts on the Human Rights in Healthcare Project that aims to develop and promote best practice around human rights based approaches to improve service design and delivery. One of the participating Trusts, MerseyCare, is piloting a human rights based approach in its Learning Disabilities Directorate that involves taking a proactive and practical approach to the implementation of individual rights for people with learning disabilities. The Department aims to widely publish and promote the learning from this work in Autumn 2008.

The ODI will continue to support Departments, including the Department of Health, in implementation of the Disability Equality Duty.

The Treatment of Adults with Learning Disabilities in Health and Residential Care Settings

- **(25) We are concerned, but not surprised, that the evidence we received shows that people with learning disabilities face similar problems in healthcare as older people, including: (Paragraph 136)**

- **Malnutrition and dehydration (Articles 2, 3 and 8 ECHR)**
- **Abusive and degrading treatment (Articles 2, 3 and 8 ECHR)**
- **Neglect of carelessness by health and social care services (Articles 2, 3 and 8 ECHR)**
- **Lack of privacy in health and social care settings (Article 8 ECHR)**
- **Lack of dignity in respect of personal care needs (Article 8 ECHR)**
- **Inappropriate use of restraint and/or medication (Article 8 ECHR)**
- **Problems with communication, particularly where patients have complex or profound learning disabilities (Article 8 ECHR)**
- **Negative, patronising and infantilising attitudes towards people with learning disabilities (Articles 8 ECHR)**
- **Discriminatory treatment of adults with learning disabilities in access to mainstream services on grounds related to their disability (Articles 2, 3, 8 and 14 ECHR)**
- **Fear and difficulties in making complaints (Article 8 ECHR)**

People with learning disabilities are entitled to be treated with the same dignity and respect as every other member of the community. Abuse of disabled people is absolutely unacceptable and Ministers are determined that lessons are learnt nationally from incidents in the past and that action is taken to safeguard adults with learning disabilities. We recognise that much more needs to be done to improve health care for people with learning disabilities. We have taken steps to improve the way in which vulnerable adults, including both older people and those with learning disabilities are treated, including:

- The Department specifically commissioned a guide to legislation to support the Dignity in Care campaign called *Promoting dignity within the law*, which was produced in February 2008 and linked to SCIE's good practice guide on dignity. It demonstrates the effects of the Human Rights Act on the care of service users. It is aimed at staff working in Health & Social Care, as well as service users themselves, and describes how this important piece of legislation translates into the rights of service users and the link to the dignity and respect agenda using clear case studies of where individuals' rights might be at risk of being breached. The good practice guide can be found at <http://www.scie.org.uk/publications/practiceguides/practiceguide09/index.asp>
- We have also published a report by Professor Jim Mansell about commissioning and providing services for people whose behaviour presents challenges, to avoid the inappropriate use of restraint or medication.
- Under the leadership of the Promoting Equality steering group, we are working with the EHRC and with professional, regulatory and educational bodies to improve the way that learning disability is addressed in undergraduate and postgraduate curricula, for instance in relation to diagnostic overshadowing.
- The Valuing People Support Team is also working with the NHS to support and encourage implementation of the primary care service framework for people with learning disabilities (which is designed to help PCTs commission GP services in ways that better address the needs of people with learning disabilities) and the framework for Practitioners with Special Interests for learning disabilities.
- In addition, the Good Practice Guidance for Commissioning Specialist Learning Disability services is designed to provide advice, support and a steer to local leadership in both the NHS and local government in order to achieve improved performance, better outcomes, reduced health inequalities and prevent abuse and neglect.¹⁴

¹⁴http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_079987.

- **(26) We are extremely concerned that adults with learning disabilities undergo degrading experiences in health and residential care settings, which closely mirror the experiences of older people, on which we reported in August 2007. This implies that poor treatment and neglect of some of the most vulnerable people in our society, at the times when they are ill, in need of care and support, and most dependent on others to secure their most basic and fundamental rights, is endemic. Treatment involving abuse, neglect or carelessness of the kind uncovered by the Healthcare Commission and the Commission for Social Care Inspection in Cornwall and Sutton and Merton by Mencap in *Death by Indifference* involves serious and severe human rights breaches. The task of securing the dignity and self-respect of this vulnerable group, which is central to the fulfilment of their human rights, is the responsibility of us all. The creation of a more positive human rights culture in service provision is vital to securing respect for adults with learning disability in need of health and social care services. (Paragraph 139)**

The Department of Health agrees that treatment that is abusive or degrading is unacceptable and unlawful. That is why the Government has taken action to respond to the DRC Report, the Report in Cornwall and has set up the Michael's inquiry.

As part of the Human Rights in Healthcare the Department of Health has convened a Human Rights Advisory Group of key senior stakeholders to inform the Department's efforts to champion human rights within health and social care. In addition, the Department is organising a series of human rights learning events across the NHS that aim to both raise awareness and also bring together and develop human rights good practice.

The Department of Health is also working with the British Institute of Learning Disabilities to help promote the involvement of self-advocacy groups in delivering training to health staff.

- **(27) We made a series of recommendations on how to meet these concerns, in our Report on the *Human Rights of Older People in Healthcare*. In light of the evidence that human rights problems extend beyond older people to a broad range of vulnerable people, we are extremely concerned that the Department of Health has offered few concrete commitments in its response to our previous recommendations on the implementation of a human rights based approach in the NHS. (Paragraph 142)**

The Government has commissioned independent evaluators to assess the effectiveness of human rights based approaches that are being piloted in the five Trusts involved in the Department of Health's Human Rights in Healthcare project. This evaluation is scheduled to report by Autumn 2008 and will inform how the Department takes forward the next phase of the Human Rights in Healthcare project.

- **(28) While we agree that the HRA is an important "lever for change", care must be taken when using such descriptions to ensure that the legal obligation of the Human Rights Act are not undermined or misunderstood. (Paragraph 146)**

The Ministry of Justice effectively completed its leadership of the Human Rights Programme, implementing the recommendations of the Review of the *Implementation of the Human Rights Act* carried out in 2006.¹⁵

As part of the programme the Ministry of Justice published generic guidance for public authorities on human rights. The guidance consists of 'Human rights: human lives – a handbook for public authorities'; 'Making sense of human rights: a short introduction' and a DVD on human rights with case studies. As of March 2008 nearly 110,000 copies of the guidance have been distributed to Government Departments, their sponsored bodies and wider public sector organisations.

¹⁵http://www.justice.gov.uk/docs/full_review.pdf

The Government has also produced for the general public a leaflet, 'An Introduction to Human Rights' – available in ten languages, 'The 3rd Edition of the Guide to the Human Rights Act' and 'The Human Rights Act – A Guide for People with Learning Difficulties'.

All publications are available on the Ministry of Justice website: <http://www.justice.gov.uk/>

The Ministry of Justice in association with stakeholders and experts in education and human rights, is developing educational materials for 11-14 year olds on human rights protection within the UK. A range of materials is already available in UK schools about International Human Rights Conventions (such as the Convention on the Rights of the Child). The new materials should be ready for launch in June 2008.

- **(29) We welcome confirmation by the Department of Health that an independent evaluator has been appointed for its Human Rights in Healthcare project. It is disappointing that the report of the independent evaluator will not be available until Autumn 2008, which will be almost eight years after the HRA was introduced. Nonetheless, we recommend that the findings of the evaluation are published and disseminated widely within the Department of Health (including to Strategic Health Authorities, PCTs and providers of health and social services) and across Government. (Paragraph 147)**

The Department will publish and disseminate the findings of the independent evaluation in Autumn 2008 as part of the revised *Human Rights in Healthcare – A Framework for Local Action* publication which will also include updated human rights based approach case studies and practical tools developed by the Trusts involved in the Human Rights in Healthcare project. This will be disseminated as widely as possible using the Department's communication channels.

- **(30) Despite our view that the Human Rights in Healthcare project has potential, we are concerned that the Department of Health may see this exercise as a panacea that will lead to a positive culture of respect for dignity and human rights in service provision. In our view, this is only one of a range of initiatives that is needed in order to achieve this aim. We recommend that the Department of Health should use the sixtieth anniversary of the NHS to gain maximum exposure for its positive commitment to ensure that "Human rights are at the centre of the values of the health and social care system in this country". We consider that the adoption of a clear strategy on human rights in policy making by the Department of Health would set a positive example on the type of culture change which will be necessary to ensure that human rights are really at the heart of service delivery. (Paragraph 148)**

The Department of Health will consider how it can promote human rights within healthcare as part of its publicity around the NHS 60th anniversary and Lord Darzi's Next Stage review.

- **(31) We welcome the positive commitment by the Healthcare Commission and CSCI to a human rights based approach to regulation and inspection. We also welcome the commitment of the Healthcare Commission and CSCI to work together to implement the conclusions of the recent Healthcare Commission Audit. We recommend that the Healthcare Commission and CSCI use this process to promote a positive approach to human rights and to the National Minimum Standards by hospitals and care homes. (Paragraph 150)**
- **(32) The Health and Social Care Bill proposes to merge the regulatory and inspection systems for health and social care. The Care Quality Commission will assume the responsibilities currently held by the Healthcare Commission and CSCI in 2009. The Government proposes to merge the National Minimum Standards for health and social care, in registration requirements for registered providers of health and social care. It proposes that "human rights will be an important feature in the requirements, and we expect that they will also feature prominently in the regulator's criteria". We will consider these proposals as part of our scrutiny of the Health and Social Care Bill. (Paragraph 151)**

Joint response to 31 and 32.

The Government notes the Committee's intention. We have developed proposals for the registration requirements that will apply to providers of health and social care services so that the Care Quality Commission can enforce them in line with the spirit of the relevant provisions of the European Convention on Human Rights. These requirements would not confer any individual rights of legal redress under the Human Rights Act on people using registered services, but have been developed to ensure the Care Quality Commission has a clear remit to act against providers which fail to comply with other legislation designed to protect people's human rights.

- **(33) We welcome the early Government commitment in *Valuing People Now* to use the forthcoming NHS Operating Framework to require strategic Health Authorities, PCT's and Trusts to deliver action plans to address the shortcomings identified by the Healthcare Commission's audit of learning disability services. (Paragraph 152)**

We welcome the Committee's support for this approach.

- **(34) We welcome the frank acknowledgement by the Minister for Care Services that more needs to be done to ensure that adults with learning disabilities can access health services on an equal basis. We consider that practical steps must be taken to meet the recommendations of the DRC Formal Inquiry, not only by the Department of Health, but by other public bodies, including Strategic Health Authorities, PCTs, and local authorities. We are disappointed that progress on implementing the recommendations by the DRC Formal Inquiry has been slow. We welcome the commitment in *Valuing People Now* that work will continue until "nationally led responses to the DRC recommendations are in place". We urge the Department of Health to provide visible national leadership on the recommendations of the DRC Formal Inquiry, by taking steps to assess progress on each recommendation and to provide a detailed strategy and timetable for implementation. We support the recommendation of the DRC Formal Inquiry, that this should take place with much greater urgency. We recommend that the Equality and Human Rights Commission continue the work of the DRC on this issue and monitor progress closely over the next year, with a view to taking enforcement action if no progress is made. (Paragraph 156)**

See the response to 17. We have seconded two NHS colleagues with experience of both commissioning and managing learning disability services (as part of a job-share) to work both with DH policy teams and with the NHS to support implementation of the commitments in Promoting Equality. They and the Valuing People Support Team are organising three regional events in June 2008 to promote the primary care service framework and Practitioners with Special Interests framework (see point 25). We will develop an accessible update on the Promoting Equality action plan for people with learning disabilities.

- **(35) We welcome the Department of Health announcement of the independent inquiry into the healthcare of people with learning disabilities. We also welcome the Government's commitment in *Valuing People Now* to consider seriously the recommendations of that inquiry on hospital and acute care. We welcome the Government's decision to highlight the duties of PCTs and general hospital trusts under the Disability Discrimination Act 1995 (as amended). This includes ensuring that their Disability Equality Schemes address those bodies ability and resources to meet the needs of people with learning disabilities. We regret that such a reminder is necessary. (Paragraph 157)**

The Government notes the views of the Committee about the healthcare of people with learning disabilities and will take these into account in its response to the consultation on *Valuing People Now*.

- **(36) In the light of the evidence gathered in this report, we call upon the independent inquiry to adopt a human rights based approach to its work. We trust that it will endorse our call for a positive approach to the implementation of statutory duties in the Human Rights Act and the Disability Discrimination Act 1995 (as amended). We will follow the progress of this inquiry with interest. (Paragraph 158)**

This is a matter for Sir Jonathan Michael, chair of the Independent Inquiry.

Parenting and Family Life

- **(37) Social Services departments, courts and other public authorities working with parents with learning disabilities and their children are subject to the duty to act compatibly with the right to respect for family life, as guaranteed by Article 8 ECHR. The state has a positive, human rights based obligation to protect children from harm and to promote their development. However, any decision which impinges on the relationship between a parent with learning disabilities and his or her children could have very serious implications for the right to respect for their family life. In such circumstances, particular care must be taken to ensure that any restrictions on the development of ordinary family relationships must not only be in the best interests of the child, but must also be a necessary and proportionate response to the level of risk posed to the child or to its parents through continuing care at home. This assessment must take into account all of the relevant facts of an individual case, including the potential for additional support to meet the needs of the parents and the child. (Paragraph 163)**

The Government agrees with the Committee's approach to working with parents with learning disabilities and their children.

- **(38) The Minister for Care Services told us that “political correctness” should not prevent the removal of a child simply because a parent has learning disabilities. We agree that the assessment of whether a child should or should not remain with its parents is a complex one, requiring the careful consideration of many factors, including the best interests of the child and the rights of the child and its parents. We welcome the Minister's acknowledgement that unless justified and proportionate in all the circumstances, removal of a child could pose a significant risk to the rights of the child and its parents to respect for family life. (Paragraph 164)**

The Government agrees with the Committee's approach to working with parents with learning disabilities and their children.

- **(39) We welcome the acknowledgement in the Government's *Good Practice Guidance on Working with Parents with a Learning Disability* that people with learning disabilities “have the right to be supported in their parenting role, just as their children have the right to live in a safe and supportive environment.” We also welcome the acknowledgement that while children have the right to be safe from harm, children's needs are usually best met by support for their parents, to look after them. (Paragraph 169)**

The Government welcomes the Committee's support for this approach.

- **(40) We consider that if the recommendations for good practice in each of these areas were implemented effectively, this could significantly reduce the risk that parents and children would be separated, in breach of [their human rights]. (Paragraph 170)**

The Government agrees with the Committee's conclusions.

- (41) We welcome the recognition in *Valuing People Now* of the need to do more to improve support to parents with learning disabilities and their children. But we remain concerned that there are few concrete proposals for action or measurable targets improving support to parents with learning disabilities and their children in that document. (Paragraph 177)

See the response to 2.

- (42) Although we welcome the commitment of the Department of Health and the Department for Children, Schools and Families to the provision of information [to parents] in an accessible way, the Minister for Disabled People has accepted that it is likely that this commitment is no more than the Disability Discrimination Act already requires of those Departments. (Paragraph 178)

See response to 56, 69 and 61.

- (43) While we recognise the potential of the *Good Practice Guidance* to improve support for parents with learning disabilities and their children, its effectiveness will depend entirely on positive dissemination and widespread implementation by local authority adults' and children's services, NHS Trusts and others. We are disappointed that the active dissemination of this important Guidance has so far relied principally upon the work of an independent parenting network, albeit supported by the Office of the National Director and his colleagues. We welcome the proposed involvement of the Care Services Improvement Partnership in further dissemination of the Guidance. We call upon the Government to set out clearly its proposals for ensuring that all local authority social services departments, including children's services and NHS Trusts are aware of the *Good Practice Guidance* and, importantly, that relevant professionals have training in its effective implementation. (Paragraph 179)

The Government will consider further how to ensure the effective dissemination of this guidance, as taken forward under *Valuing People Now*.

- (44) We note that although *Valuing People Now* refers to the need for independent advocacy for parents with learning disabilities, it makes no proposals for action to ensure and increase the availability of such provision. We call upon the Government to take action on this issue in our discussion of advocacy in Chapter 8 below. (Paragraph 180)

See response to 68 and 70.

- (45) We consider that the proposals for monitoring progress in [this part of] *Valuing People Now* are particularly weak and lack precision. Public authorities have binding duties under the Disability Discrimination Act and the Human Rights Act to provide services without discrimination, to implement effectively their positive duties to disabled people, and to uphold the rights of parents with learning disabilities and their children to respect for their private life. In the light of these duties, we recommend that the Department of health requires Learning Disability Partnership Boards to report annually on local commissioning of services to support parents with learning disabilities; and ensures that data is collected locally on the numbers of parents with learning disabilities supported by community teams for people with learning disabilities, and the numbers of their children taken into care, each year. (Paragraph 181)

The Government notes the concerns of the Committee and will take their views into account in considering the response to the consultation on *Valuing People Now*.

Treatment of People with Learning Disabilities in the Criminal Justice System

- **(46) We recognise that not all abuse against adults with learning disability will amount to criminal behaviour. We recognise that in many circumstances, individuals who uncover abuse and criminal behaviour against vulnerable adults will rightly treat the protection of the victim as a priority. Where an individual has been seriously assaulted or where his or her life has been endangered, there is a clear obligation on the State, secured by that individual's ECHR rights, to conduct an effective investigation of the circumstances of the abuse. This includes an obligation to provide for the prosecution of the individual responsible, if appropriate. These important human rights obligations apply to everyone, including people with learning disabilities, unless there are objective reasons why an investigation or a prosecution should not go ahead. (Paragraph 195)**

The Crown Prosecution Service (CPS) was set up in 1986 as an independent authority to prosecute criminal cases investigated by the police in England and Wales. Crown Prosecutors must follow the Code for Crown Prosecutors when making decisions on cases.¹⁶

The Code requires prosecutors to provide guidance and advice to investigators throughout the investigative and prosecuting process. Following the introduction of the statutory charging scheme, prosecutors and police are encouraged to work together, before charge, to ensure swift identification and resolution of issues relating to the case. In the case of vulnerable witnesses the police will undertake a needs analysis to assist in identifying appropriate special measures and witness care.

Paragraph 46 states that there is an obligation to provide for a prosecution where an individual has been seriously assaulted or where his or her life has been endangered. In deciding whether a case should proceed, however serious, prosecutors must always apply the Code for Crown Prosecutors.

The Code provides for a two stage test. First, there must be sufficient evidence for a realistic prospect of conviction, that is to say that a court is more likely than not to convict the defendant of the charge alleged (paragraph 5.3 of the Code). The Code provides guidance on factors to be taken into account when considering the evidential stage, including the reliability of the evidence, be it the reliability of any confession or the reliability of a prosecution witness.

In this context, the CPS has in April 2008 completed the national implementation of pre-trial witness interviews (PTWIs). Under the PTWI scheme, prosecutors can interview witnesses about their evidence to assess the reliability of a witness's evidence or to understand complex evidence. Specific practical training is being provided in relation to interviewing witnesses with learning disabilities.

If the evidential stage is passed, the prosecutor must move on to consider the public interest stage. As a general rule, unless there are public interest factors against prosecution that clearly outweigh those in favour, a prosecution should proceed (paragraph 5.7 of the Code). The Code sets out a list of factors for and against prosecution. In the context of victims with a learning disability, the fact that the victim is vulnerable is a factor in favour of prosecution.

The CPS is committed to ensuring victims and witnesses with mental health and learning disabilities are fully supported so that as many crimes as possible are brought to justice. Since Autumn 2007, the CPS has been considering how victims and witnesses with mental health issues and learning disabilities can be better served by the criminal justice system, particularly the CPS.

As such, a programme of work is currently being led by the CPS Policy Directorate to develop a comprehensive strategy to improve the way in which the CPS deals with victims and witnesses with learning difficulties and/or mental health issues.

¹⁶http://www.cps.gov.uk/victims_witnesses/code.html

The CPS Policy Directorate is undertaking a research project to explore CPS decision-making in cases involving victims and key witnesses living with mental health problems or learning disabilities. The research findings are expected in summer 2008 and it will inform and support the wider programme of work the CPS is conducting.

The research will help inform a new Public Policy statement that will be subject to public consultation later this year. We have already engaged with key stakeholders from the voluntary sector as well as other Government departments to assist in informing the development of the work, including the consultation. This close engagement will continue.

In 2008, the CPS will also be publishing its victim and witness national strategy for 2008 – 2011. The objectives specifically include working with other agencies and voluntary sector organisations to review our guidance and procedures in relation to victims and witnesses with a mental disorder and learning disabilities and undertaking work on the use of special measures, in particular ensuring early identification of witnesses requiring special measures.

- **(47) We recommend that in the review of *No Secrets* and the proposed *Valuing People Now* guidance on crime and people with learning disabilities, the Government provides clear and accessible guidance on protecting people with learning disabilities (and other vulnerable adults) from abuse and ensuring that if a crime is suspected, effective steps are taken to inform and involve the police. We urge the Government to ensure that the relevant criminal justice agencies, including the Association of Chief Police Officers, the Crown Prosecution Service, the Home Office and organisations of and for people with learning disabilities, are closely involved in shaping this guidance. (Paragraph 196)**

The Department of Health is looking at exactly these issues in the Review of *No Secrets*. We are carrying out a national consultation on how safeguarding can be improved for all people and we hope to publish clear guidance at the end. The particular circumstances of people with disabilities living in the community and living in institutions has been highlighted.

We note the recommendations that CPS should be closely involved in developing guidance on *No Secrets* and *Valuing People Now*. In addition to working in partnership with relevant stakeholders in carrying its programme of work forward in this area, the CPS is continuing to remain engaged with relevant Departments and organisations who are working on complementary initiatives such as *No Secrets*.

The CPS has worked closely with the Office for Criminal Justice Reform (OCJR) in the development and implementation of the intermediary scheme and we are currently working closely in reviewing inter-agency guidance on special measures meetings and pre-trial therapy.

- **(48) We are disappointed that the Government has not agreed to create a duty to report abuse, as we previously recommended. We call on the Department of Health, as part of their review of the *No Secrets* Guidance, to reconsider our recommendation that there should be a duty on those working with vulnerable adults, at least within the NHS and in care homes to report suspected abuse. (Paragraph 197)**

The review of *No Secrets* is examining whether new legislation is required. As part of this it will consider whether a new legal duty to report abuse would be practicable and useful. The review has however noted that a duty to report suspected abuse has been incorporated into the policies of many organisations such as care homes and domiciliary care agencies, and this is an important step.

- **(49) People with learning disabilities, in common with the wider population, may have mixed experiences of dealing with the police, the courts and other parts of the criminal justice system. Every part of that system has an obligation to promote equal access to their services for disabled people, including those with learning disabilities, as part of their duties under the Disability Equality Duty. (Paragraph 200)**

The Youth Justice and Criminal Evidence Act 1999 (the 1999 Act) introduced a range of special measures for vulnerable and intimidated witnesses. The special measures are: screens in the courtroom; evidence by live link; evidence given in private (for sex offences and those involving intimidation); removal of wigs and gowns; video recorded evidence-in-chief and intermediaries and aids to communication – a person or device may be used to improve the communication and understanding of the witness. The intermediaries special measure has now been rolled out nationally. We were pleased to note that witnesses to the Committee had identified the national roll out of intermediaries as a positive development (at paragraph 199).

Both the 1999 Act and the Code of Practice for Victims of Crime (“the Victims’ Code”) require vulnerable and intimidated witnesses to be consulted about special measures that might assist them to give evidence. Independent research published in 2004 found that one-third of witnesses would not have been able to give evidence without the assistance of special measures (rising to 44% where the witness was a victim of a sexual offence).¹⁷

The Victims’ Code requires police forces (and all organisations with responsibilities under the Code) to take all reasonable steps to identify vulnerable or intimidated victims. This is also highlighted by the *non statutory* Witness Charter. The Code also commits Witness Care Units to undertake detailed needs assessments of all victims and witnesses following the first hearing in a case.

Work is in progress to assist the police and other criminal justice agencies to improve the identification of vulnerable and intimidated witnesses. This is in response to independent research which indicates that officers found it easier to identify witnesses who were vulnerable due to their age than other types of vulnerable or intimidated witness, particularly those with learning difficulties, mental disorders or those who are intimidated.¹⁸

- **(50) We welcome the Government’s commitment to meet the concerns of people with learning disabilities about hate crime, in *Valuing People Now*. We welcome the proposal that the Home Office should lead on the production of guidance to address hate crime and to increase the safety of people with learning disabilities in their communities. We recommend that people with learning disabilities, their carers and supporters, ACPO, the Police Federation and the CPS are closely involved in the production of this guidance. We consider that more accurate information would better inform the Government’s policy on this issue. As part of the Government’s commitment to address hate crime and the personal safety of adults with learning disabilities, we recommend that steps be taken to gather more consistent data on the level of crime against people with learning disabilities, either through a survey sponsored by the Home Office, or as part of the British Crime Survey. (Paragraph 204)**

The Home Office is changing the way it collects data from the police. This will now be done on a record or case basis. We are also introducing flagging of hate crimes including disability related hate crime. This will help to better understand the nature and extent of disability hate crime and help to target interventions. A key priority is to encourage reporting of hate crimes.

The Department of Health and Home Office will consider this recommendation further in responding to the consultation in *Valuing People Now*.

See also response to 47.

¹⁷Hamlyn, B, Phelps, A, Turtle, J and Sattar, G, *Are special measures working? Evidence from surveys of vulnerable and intimidated witnesses* (London: Home Office Research Study No 283 (June 2004)).

¹⁸Burton, M, Evans, R and Sanders, A, *Are special measures for vulnerable and intimidated witnesses working? Evidence from the criminal justice agencies* (Home Office On line Report 01.06).

- **(51) We welcome the recent steps taken by ACPO and the CPS to improve their policy on crimes against victims with disabilities and hate crime, including against adults with learning disabilities. We were disappointed to hear that the CPS had not initially worked closely with the National Co-Director for Learning Disabilities. We recommend that, where any public sector agency is considering a policy which is relevant to disabled people, steps are taken to ensure that people with learning disabilities are specifically considered as part of the policy formulation, and if possible, involved in the preparation of that policy. We welcome the proposal by the CPS to amend their charging guidance to ensure that they are involved at an early stage in the investigation of crimes against people with a learning disability where hate crime is suspected. Whilst any decision on prosecution must be based upon the evidence available and should take full account of the rights of the defendant, we consider that this would be a positive development which could increase the confidence of adults with learning disability in the police and the criminal justice system, by ensuring that any element of hostility or prejudice towards them is properly investigated and considered as part of any prosecution. (Paragraph 209)**

As stated in our response to recommendation 46, the Crown Prosecution Service(CPS) is currently working on the development of a new Public Policy statement and guidance in relation to victims and witnesses with mental health issues and/or learning disabilities. This will include a thorough review of current prosecution practice. We welcome the positive response the Committee has taken in respect of our proposal to amend the CPS charging guidance.

We note the criticism that we had not worked closely with the National Co-Director for Learning Disabilities in the development of our policy on crimes against victims with disabilities and hate crime. We also note the recommendation that people with learning disabilities are considered and, if possible involved in the preparation of that policy. As part of the work that is being undertaken in reviewing our practice and policy in relation to victims and witnesses with mental health issues and/or learning disabilities we are engaging closely with voluntary sector organisations representing these groups. We will include the National Co-Director for Learning Disabilities.

In addition, as part of the training for prosecutors conducting pre-trial witness interviews, we have arranged for the Anne Craft Trust to provide a series of one day practical training sessions for prosecutors which will include interviewing a person with learning disabilities. This is currently taking place.

- **(52) We are concerned that the problems highlighted by this evidence could have potentially very serious implications for the rights of people with learning disabilities to a fair hearing, as protected by the common law and by Article 6 ECHR. Some of this evidence also suggests that there are serious failings in the criminal justice system, which give rise to the discriminatory treatment of people with learning disabilities. (Paragraph 212)**

See response to 46 and 49.

- **(53) The evidence which we have received on the treatment of people with learning disabilities in prison and their inability to secure equal access to parole, raises one of the most serious issues in our inquiry. We are deeply concerned that this evidence indicates that, because of a failure to provide for their needs, people with learning disabilities may serve longer custodial sentences than others convicted of comparable crimes. This clearly engages Article 5 ECHR (right to liberty) and Article 14 (enjoyment of ECHR rights without discrimination). It is also an area that falls within the Prison Services' responsibilities under the Disability Equality Duty. (Paragraph 215)**

It is Prison Service policy, in line with developing legislation, that disabled prisoners are not discriminated against in any aspect of prison life and that equality of opportunity in accessing all parts of prison life, and in particular to address their offending behaviour and be resettled is offered to all prisoners.

Prison Service Order 2855 entitled 'Prisoners with Disabilities' has recently been revised. It re-emphasises the importance of ensuring that all prisoners are able to access the courses and programmes necessary for them to complete their sentence plan, (and therefore gain release at the earliest possible date). Although there will always be some prisoners who for whatever reason find it difficult to address their offending behaviour, alternatives are being developed for those prisoners who have difficulty either with the cognitive or written work involved.

The Valuing People Support Team commissioned two learning disability organisations (KeyRing and The Skillnet Group) to develop and deliver a training package designed for prison staff on the needs and related issues of working with offenders with learning disabilities. This initiative has been supported by the Department of Health and the National Offender Management Service.

This pilot was in response to findings contained in the recently released "*No One Knows*"¹⁹ report (Prison Reform Trust) which has identified growing concern about the number of people with learning disabilities and learning difficulties who come into contact with the Criminal Justice System, specifically in the prison service. The evaluation of the pilot indicates the benefits of providing staff with the skills to identify and to support this group of prisoners. The Department of Health and the National Offender Management Service are working together to make the training available across the prison estate.

A handbook entitled *Positive Practice, Positive Outcome*²⁰ has been published by Care Services Improvement Partnership (CSIP) which helps criminal justice professionals recognise when a person has learning disabilities, and provides guidance on how to secure the types of support available. This booklet has been circulated to every prison Disability Liaison Officer.

New guidance issued in 2007 provides a set of principles across all offending behaviour programmes to be used when assessing an offender's suitability to participate in an intervention.

The suitability guide identifies a checklist of factors to be considered which includes: intellectual ability, language, literacy, dyslexia, mental and physical health, disability, drug use and psychopathic traits. Guidance on assessing the relevance of these factors and whether or not they are likely to impact on an offender's ability to benefit from treatment is provided. Treatment teams have a proforma for assessing these factors in collaboration with offenders.

- **(54) We welcome the publication of the Government's consultation, *Improving Health, Supporting Justice*. We recommend that the Government ensures that people with learning disabilities are able to participate effectively in that consultation. We recommend that each of the relevant criminal justice agencies, including the police, the Crown Prosecution Service, the Court Service, the Prison Service and the Probation Service undertake an audit of their services for compliance with ECHR rights, the Disability Discrimination Act and, specifically, the Disability Equality Duty, in order to inform the Government's *Improving Health, Supporting Justice*, when it is finalised next year. (Paragraph 217)**

The Government will give further consideration to this recommendation as part of responding to the consultation on *Improving Health, Supporting Justice*.²¹

¹⁹<http://www.prisonreformtrust.org.uk/subsection.asp?id=848>

²⁰<http://www.dignityincare.org.uk/viewdocument.php?action=viewdox&pid=0&doc=33224&grp=1>

²¹http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_080816

Barriers to an “Ordinary Life”

- **(55) Under the Disability Discrimination Act 1995 (as amended), the statutory obligation on providers of goods and services to the public to make reasonable adjustments to enable disabled people to use their services may, in some circumstances, require that information is made available to people with learning disabilities in an easy to understand, written, or other appropriate format. We consider that the provision of accessible information for people with learning disabilities should be standard practice for public bodies such as the Government departments, NHS bodies and local authorities, who are all subject to this duty to make reasonable adjustments, and are also subject to the duty to promote disability equality. (Paragraph 225)**

The Government agrees that the provision of accessible information for people with learning disabilities is important and is something that public bodies should consider as part of their action planning for their disability equality schemes. The Secretary of State reports by government departments due in December this year will also consider how accessible information is being made available in sectors.

- **(56) With the introduction of the Disability Discrimination Act (as amended) and the duty on providers of goods and services to make reasonable adjustments to meet the needs of people with learning disabilities, we believe that adults with learning disabilities should be able to obtain the information they need in formats they can understand. We consider that the statutory obligation to make reasonable adjustments includes ensuring that information is available in an easy to understand format. This duty is reinforced in relation to public authorities, by Disability Equality Duty. We are deeply concerned that this does not reflect the experiences of our witnesses. (Paragraph 226)**

The Department of Health has commissioned Generate to develop a web-based database of accessible information which was launched on 1 May 2008.²² The Department of Health will consider how it will review the information the NHS and other relevant bodies provide to people with learning disabilities as part of its Secretary of State’s Report.

- **(57) We are disappointed by the lack of specificity and at the absence of any reference to goals, targets or identifiable commitments to increase the provision of accessible information in the Action Summary relating to this section of *Valuing People Now* [on accessible information]. It is not clear how progress is to be made or measured in the absence of any specific commitments. We recommend that such commitments are included in the revised version of *Valuing People Now* to be produced later in 2008, following consultation. (Paragraph 231)**

The Government will consider this recommendation further in responding to the consultation in *Valuing People Now*.

- **(58) We recommend that [the issue of accessible information] receive appropriate attention in the ODI’s forthcoming Independent Living Review Strategy. (Paragraph 232)**

The Government’s recently launched Independent Living Strategy contains specific commitments aimed at communicating independent living messages and a particular commitment to focus on the specific communication needs of different groups of disabled people, including black minority ethnic communities and older people. The issue of accessible information is particularly important and is being addressed through the Office for Disability Issues’ Improving Information Project and the Images of Disability initiative.

²² www.easyhealth.org.uk

- **(59) In addition, we call on the ODI to ensure that statutory authorities and others are fulfilling their duties under the Disability Discrimination Act and the Disability Equality Duty by making information available in formats that are accessible to people with learning disabilities. This can be through providing it themselves, by commissioning it from others, or requiring it as part of contractual agreements. The ODI should monitor and review progress as part of an overall strategy for the provision of accessible information. (Paragraph 233)**

Government departments will monitor and review progress as part of their Secretary of State's Report. Whilst ODI has the lead on the overall strategy, it is not responsible for monitoring and reviewing progress as that statutory duty lies with individual departments.

- **(60) We also call upon the Healthcare Commission and the Commission for Social Care Inspection to ensure that scrutiny of the availability of accessible information (including easy to understand information on what is abusive practice and what people can do about it) is routinely included in the course of their inspections of providers of health and social care. (Paragraph 234)**

The Government will consider this further in discussion with the two Commissions.

- **(61) Empowering people with learning disabilities to stand up for their human rights is important. Although, in some places in this report, we have described this group as vulnerable, we have been particularly impressed by the role played by self-advocacy groups and our individual witnesses with learning disabilities, in telling us how their rights could be protected. We are aware that some people with learning disabilities will not be able to understand information about human rights by themselves, even if it is in an easy read, illustrated or audio format. They will need to have the information explained and have support to understand it. (Paragraph 238)**

We note the Committee's views and will consider further in responding to *Valuing People Now*.

- **(62) These concerns are indicative of a disappointing lack of central leadership on this issue. We were deeply disappointed that the Office for Disability Issues could not provide an accessible summary of the United Nations Convention on the Rights of Persons with Disabilities until more than a year after the Convention was agreed. We were equally concerned that the Easy Read guide to the Human Rights Act, prepared by the Ministry of Justice, was not available to be downloaded from the Ministry of Justice website for some time. We raised these concerns with the Minister for Human Rights and the Minister for Disabled People and both of these problems have now been resolved. (Paragraph 241)**

The Government notes the Committee's comments. The Minister for Disabled People in her oral evidence to the Committee accepted the point that the Easy Read summary of the UN Convention on Disability Rights had probably taken slightly longer than best practice would have allowed us to do.

See also response to recommendation 5.

- **(63) We welcome the recent publications from the Office for Disability Issues on improving information for disabled people, including the document aimed at public sector communications and practitioners. These set out five principles for producing better information for disabled people: (Paragraph 242)**
 - **Principle 1: ensure that disabled people are involved from the start.**
 - **Principle 2: provide information through a range of channels and formats.**
 - **Principle 3: ensure your information meets users' needs.**

- **Principle 4: clearly signpost other services.**
- **Principle 5: always define responsibility for information provision.**
- **These principles should be followed both within and beyond Government.**

The Government welcomes the Committee's support for the Office for Disability Issues' five principles for producing better information for disabled people. The ODI has worked with four local authority partnership projects to test the application and effectiveness of these principles. Findings from this work will be made available later this year. The work is also being used in the development of a toolkit for local authorities on how to implement the five principles.

- **(64) We were dismayed by the Minister's frank admission that not only is there no Government strategy on the provision of accessible information on rights, there is no wider cross-Government strategy on providing information in an accessible format. We accept that it can sometimes be difficult to provide information in this way quickly, consultation with relevant stakeholders will often be appropriate and necessary, and that, sometimes, the most appropriate format will not be the written word. Nevertheless, we expect central Government to provide a lead and to set a good example by ensuring that people with learning disabilities have equal access to information in appropriate formats, as required by the Disability Discrimination Act and the Disability Equality Duty. (Paragraph 244)**

New guidance for Government departments has just been developed on the provision of accessible information via the Images of Disability initiative and is available on the Office for Disability Issues website.²³ This guidance does not support a commitment of providing easy read in all circumstances as potential usage levels need to be balanced against the impact on resources. It may also be the case that another reasonable adjustment might be more effective e.g. having an individual to talk someone through a document. However, we would always expect departments to meet their obligations under the Disability Discrimination Act and Disability Equality Duty. As detailed above, the Office for Disability Issues has also been undertaking work on improving information provision through its Improving Information project.

- **(65) We recommend that the Office for Disability Issues work with the Office of the National Director for Learning Disabilities at the Department of Health and the Cabinet Office to formulate and implement a cross-Government strategy for the provision and distribution of easy to understand, accessible information, by Government (and other) bodies, as a matter of urgency. We recommend that a specific strategy on accessible information about human rights and equality is formulated by the Office of Disability Issues, working with the Ministry of Justice. The Equality and Human Rights Commission should be closely involved in the development of these strategies and should monitor their implementation in practice. (Paragraph 245).**

The Government recognises the importance of accessible information for disabled people. The Office for Disability Issues has put in place an 'Improving Information project' aimed at Government Departments and public bodies (which has developed the five principles for producing better information for disabled people referred to above). In addition, new guidance for Government departments on the provision of accessible information has recently been prepared via the Images of Disability initiative and is available on the Office for Disability Issues website. The Office will work across Government departments to seek to ensure this guidance is adopted.

- **(66) We call upon the Government to review the availability of Independent Mental Capacity Advocate Services. (Paragraph 255)**

The Independent Mental Capacity Advocate Service (IMCA) was only introduced in April 2007. The Government is monitoring the IMCA service and will consider whether to review the service as it is rolled out.

²³ www.officefordisability.Gov.UK/resources/Imagesofdisability.asp

- **(67) We recommend that parents with learning disabilities should have access to independent advocacy when subject to safeguarding procedures, particularly before any court proceedings. We call upon the Government to review current provision of advocacy services for parents with learning disabilities, to ensure that such services are available in these situations. (Paragraph 258)**

The Government has introduced statutory advocacy for certain people with learning disabilities when they are subject to safeguarding procedures. This applies both when they are victims of abuse and when they are perpetrators of abuse. This right to advocacy is targeted to those most in need.

Local authorities have, however, the right to make advocacy available much more broadly and many do make advocacy services available for people with learning disabilities.

- **(68) We are aware that resources are limited, but are persuaded that for many people with learning disabilities, access to independent advocacy may be the only realistic means of securing their human rights, not least if family carers are no longer around to advocate on their behalf. (Paragraph 260)**
- **(69) We consider that adults with learning disabilities, particularly those who are most vulnerable (including parents, adults with complex and profound learning disabilities and those involved in the criminal justice system), would benefit greatly from the assistance of independent advocates in order to secure their human rights on the same basis as the rest of society. (Paragraph 261)**

Response to 68 and 69

The Government recognises the importance of independent advocacy to people with learning disabilities. This is reflected in the recent cross-government concordat *Putting People First* which includes the objective of a universal information, advice and advocacy service for people needing services and their families. Local authorities have a clear role to play in investing in advocacy services to increase the number of people with learning disabilities who have the support of an advocate. Local authority investment in advocacy has increased every year since *Valuing People* was published.

- **(70) We welcome this commitment [*Valuing People Now: on the national advocacy fund*], but call upon the Government to review the availability of independent advocacy for people with learning disabilities whose needs fall outside the scope of the Independent Mental Capacity Advocate services provided under the Mental Capacity Act 2005, or the proposed reform of health and social care complaints procedures. We recommend that as part of their proposal to support advocacy to have an increasing impact, the Government ensures that independent advocates, including independent mental capacity advocates and others, have an understanding of human rights principles and the positive duties of public authorities and service providers towards adults with learning disabilities. (Paragraph 263)**

There is a great deal of advocacy outside the scope of the Independent Mental Capacity Advocates. These provide only a small part of the total advocacy provided in Britain. There is a strong tradition of a rights based approach to advocacy.

- **(71) People with learning disabilities should be subject to the same test for capacity to vote as people without learning disabilities. However, assumptions that adults with learning disabilities lack capacity may prevent them from exercising their right to vote and to participate in the democratic process. (Paragraph 272)**

The law makes no distinction between those with and those without learning disabilities for the purposes of electoral registration and voting. The Electoral Administration Act 2006 clarified this position by abolishing some ancient common law rules relating to incapacity to vote by reason of a person's mental state. This means that some unhelpful and ambiguous terms no longer apply and that any potential reliance on archaic common law judgements has been prevented.

Nevertheless, the Government is aware that incidents have been reported when those who lack mental capacity have faced difficulties either in registering to vote or in polling stations. The Government regularly emphasizes to Returning Officers the need for adequate guidance and training to be given to all staff – including those temporarily employed at polling stations – and provides funding at general and European elections for that training to take place.

- **(72) We recommend that the Electoral Commission and the Ministry of Justice, working with the Office of the National Director for Learning Disabilities and the Equality and Human Rights Commission, produce guidance for Presiding Officers on the test for capacity to vote and how to assess this. The Electoral Commission should work together with the Equality and Human Rights Commission to take steps to make voting more accessible for people with learning disabilities. As part of this process, we recommend that the Government consider the role of the proposed Care Quality Commission, and whether it should monitor how registered providers of care facilitate, or undermine, service users rights to vote. (Paragraph 273)**

The Electoral Commission already provides, as part of its general guidance on managing the electoral process, advice and assistance both to managers and staff about dealing with the public, including those with learning disabilities. It is for the Commission to decide how it allocates its resources and manages its priorities, but the Government is very happy to work together with the Commission and other bodies to identify possible improvements or initiatives to make the electoral process more accessible to those with learning disabilities.

- **(73) We recommend that when *Valuing People Now* is revised, after consultation, local commissioners and service providers should pay greater attention to how they organise services, in order to maximise, rather than limit, people’s opportunities for social relationships and inclusion in the community. (Paragraph 282)**

The Government agrees with this approach at a local level.

- **(74) We recommend that the final version of *Valuing People Now* consider the devastating impact which poor access to communication aids can have on the ability of some adults with learning disabilities to communicate with others, and thus participate in social relationships and the life of the community. (Paragraph 284)**

The Department of Health will consider this recommendation further in responding to the consultation on *Valuing People Now*.

- **(75) We recommend that the Department of Health gathers and publishes information on the nature and numbers of out of county placements, and on the significant impact such placements have on individuals with learning disabilities, to inform its work on the revised version of *Valuing People Now*. (Paragraph 288)**

Some information is already collected on residential care out of area placements, but we will consider this further in the response to *Valuing People Now*.

- **(76) In light of the significant role commissioners and service providers will play in the protection of the human rights of adults with learning disabilities, we were disappointed that the recently published Department of Health Good Practice Guidance for Commissioning Specialist Adult Learning Disability Health Services fails entirely to mention “human rights” or a “human rights based approach” or to provide any practical guidance to commissioners on how to use commissioning agreements to secure respect for the rights of adults with learning disabilities. (Paragraph 291)**

As part of the Human Rights in Healthcare Project the Department is organising a learning event in conjunction with Southwark Health and Social Care Trust that will address the issue of human rights and commissioning.

- **(77) The Minister told us the Government intended to ensure that the new Care Quality Commission would be under a responsibility to regulate to the “standards that would be expected if the Human Rights Act were to apply to those providers”. The Human Rights Minister recently told us that a statutory solution which will extend the full protection of the Human Rights Act to service users who receive support from a private sector provider will not happen until after the conclusion of a consultation on its forthcoming Green Paper on a Bill of Rights for Britain. We consider that this presents a significant retreat from the Government’s earlier commitment to provide a solution for private care homes as soon as possible. We are concerned that this change of view will leave a significant gap in the protection of vulnerable people receiving support in the private sector, including adults with learning disabilities. We recommend that the Government legislate to ensure that all private providers of health and social care are considered public authorities for the purpose of the Human Rights Act and are subject to the duty to comply with Convention rights. (Paragraph 292)**

As the Committee knows, the Human Rights Act – like the European Convention on Human Rights – was only ever intended to apply as between the individual and the state. Therefore, the Government’s intention was that where a person is receiving publicly-arranged care and accommodation, the provider of that care and accommodation should be directly subject to the Human Rights Act. It has never been the Government’s intention that obligations under the Human Rights Act should apply to purely private situations.

As the Committee further knows, the Government is currently considering whether it can use the Health and Social Care Bill specifically to provide that, with reference to the circumstances of the *YL* case, the provision of publicly-arranged care and accommodation should be treated as a function of a public nature for the purposes of the Human Rights Act. This is in addition to the ongoing work towards a consultation on the wider scope of the Human Rights Act in the context of the work towards a British Bill of Rights and Responsibilities.

- **(78) Although we were impressed by the passion for a human rights based approach expressed by the Minister for Care Services and the Minister for Disabled People, we are persuaded that real change for adults with learning disabilities will only happen if practical steps are taken to promote a more positive approach to the rights of adults with learning disabilities on the ground, in mainstream public services. (Paragraph 295)**

The Government agrees with this approach. *Valuing People Now* encapsulates a real determination to drive forward change on the ground.

Conclusions: Putting Human Rights Principles into Practice

- **(79) Public authorities should never be allowed to treat their duties towards adults with learning disabilities under the Human Rights Act 1998 and the Disability Discrimination Act (including their positive duties under the Disability Equality Duty) as optional. (Paragraph 296)**

The Government notes the committee’s views. We believe this is an issue for the Equalities and Human Rights Commission on enforcement.

- **(80) We urge the Department of Health and the Office for Disability Issues to consider opportunities for joint-working to meet the aims of *Valuing People* and *Valuing People Now*. As part of this process, we recommend the amendment of *Valuing People Now*, to remind all public authorities, including Government Departments, local authorities and NHS Trusts, that the aim of the Government’s policy is grounded both in the need to respect the human rights of adults with learning disabilities, and in the binding obligations of the Human Rights Act 1998 and the Disability Discrimination Act (as amended). We consider that this would send a strong message to mainstream services that implementation of this policy is not optional. (Paragraph 301)**

The Department of Health will consider this recommendation further in responding to the consultation in *Valuing People Now*.

- **(81) We consider that the Equality and Human Rights Commission has a crucial role to play in the creation of a broad culture of human rights. (Paragraph 303) We encourage the Equality and Human Rights Commission to ensure that it monitors the performance of the Government and other public bodies in relation to the treatment of adults with learning disabilities, and take steps, including through active involvement with their statutory Disability Committee or otherwise, to ensure that adults with learning disabilities play a central role in its work and that their views and voices are heard. (Paragraph 303)**

The Commission for Equality And Human Rights will respond directly to the Committee in their independent role.



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