



THE ACCESS GROUP

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10 July 2013

PIP Assessment Development Team
Department for Work & Pensions
2nd Floor, Area B
Caxton House
Tothill Street
London SW1H 9NA

Dear Sir/Madam

Consultation on Personal Independence Payments - activity assessments:

Having had an opportunity to discuss and canvass this consultation with my members and other local and Kent-wide groups, they have asked me to respond as follows:

In the light of comments by the UK's Supreme Court that The UN Convention on Disabled Peoples Rights 2009, is regarded as "stand alone", rather than part of The Equality Act 2013, this will have a profound affect upon the way the assessment criteria for the way PIP's is operated.

I have detailed the legal timeline, accepted by the Chairman of The Supreme Court, which does make this response overlong, but gives you the legal insights into why coping with moving around and undertaking activities are subject to compliance with the various articles of the Convention. It is now clear that a failure to meet that compliance prior to the introduction of the new assessment criteria will have costly consequences for the UK..

Campaigning for the rights of Disabled People
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1. Useful Background:

As a direct result of High Court cases involving Human Rights Act 1998 Articles 8 - the right to independent access & living; 9 - the right to freedom of association, in 2000, the then Prime Minister Tony Blair agreed to formally adopt The UN Convention and issued a raft of legislation and regulations, including:

- * The Direct Payments Act 2000
- * The DDA Bus & Coach regulations 2000 - final compliance is not until 2016 for low decker buses and 2017 for double decker buses; "Talking Bus Stops" and audible/tactile information has yet to be introduced nationwide; many bus stops and interchanges are inaccessible; few buses outside London have audible announcing systems vital for blind people and due to a failure by the Minister for Transport regulations relating to priority areas for disabled people and awareness training for drivers has been overlooked
- * The DDA Rail Vehicles regulations 2000
- * The DDA Hackney & Hire Car Regulations 2000 - not fully implemented, as a result outside London few vehicles are compliant. In a recent Law Commission consultation, the Commission decided that because a hackney carriage "plys for hire", it must now be independently accessible to all. That will prove very costly for the industry to implement at short notice.
- * The Equality Standards in Local Government Targets 2000 (ESLG), require the adoption and total compliance by all local authorities at the lowest legal compliance level with The UN Convention, also known as The Social Model.

In the same year, to assist with the removal of major barriers to independent access John now Lord Prescott, then Secretary of State for DETRA issued a funding invitation for local authorities to create a Local Transport Plan (LTP) and as part of that funding process, if the bidder included The NFBUK Inclusive Access document they were entitled to up to £10 million match funding pump priming funding to remove and improve independent access. Kent County Council, for example, ignored this offer, as did some other Conservative held council's. That decision will have far reaching consequences and increased costs.

- 1.1 Because of these failures Blair issued, as part of the DDA 2005, The Public Authorities Disability Equality Duty Regulations 2005 enacted in 2006. Those regulations, since incorporated within The Equality Act required all listed public authorities and government departments to undertake a Disability equality Impact Assessment (DEIA) on all policies,

practices, procedures and service provision to ensure that no disabled person was excluded, treated less favourably or directly discriminated against in any way. Recent court decisions have indicated that where an Equality Impact Assessment (EIA) clashes with a DEIA, as inevitably they must, the new policy will be deemed illegal. Furthermore in 2007 The National Audit Office ruled in 2007 that:

"all agents, contractors and service providers of a listed public authority must comply with the DED of the said listed public authority."

Thus binding all private companies and charities acting as service providers, who had hitherto been exempted. For example, all charities acting as social care providers for social services, bus and rail companies acting as a public service provider, as well as all contractors and agencies.

2. The UN Convention:

As the former Vice Chairman of JCMBPS and an Executive Council Member of both RNIB & NFBUK, I was intimately involved in the decision by Blair to adopt The Convention. The dilemma that he and government faced, was how to fund and implement by 2025 the requirements of all the articles within the Convention. Hence the introduction of a step by step approach starting with the legal requirements of ESLG to prepare local government and make them aware of their legal duties. Likewise the DED was designed to enforce compliance. The current situation has resulted in many authorities trying to ignore the legal requirements and abrogating their legal duty of care..

2.1 There are five key articles within the Convention which impact on the criteria of coping and moving around activities, they are:

Article 9 - the right to independent access

Defined as, "the ability of a disabled person to independently access, without the assistance of a third party, to all:

- * goods (difficult for a blind person, or someone in a wheelchair or with arthritis)
- * services must be independently accessible to all.
- * information - courts have ruled it is illegal to rely upon the internet alone, all service providers must have alternative independently accessible formats - based on DDA1995 requirement to be legally compliant by 2000. Hence without "Talking Bus Stops" and audible announcements on buses a barrier is created which makes it impossible for disabled

people to cope. DWP also risk prosecution for reliance on the internet to claim benefits, without alternative accessible services being made available and properly staffed..

- * **facilities** - this includes all buildings, not just public buildings, but shops, offices, flats and homes. All townscapes, all footways must be "dropped", tactile and wayfinding lines included. All barriers removed including chairs & tables, "A" Boards etc, steps replaced with ramps. Note DfT's "Inclusive Access" Book issued in 1998 for general advice. All street and other signage must be in pictogram.tactile/audible formats. This affects directly all planning law, failure to act now, means that further barriers to capability are created.
- * **all modes of transport** - it requires that all modes of public transport must be independently accessible; all bus stops, transport interchanges and all railway stations must be compliant. Failure means that disabled people cannot cope. The recent failure to regulate awareness and priority areas on buses and appropriate signage. Hackney carriages and all voluntary service vehicles must now be independently accessible to all.
- * **workplaces** - by 2025 all workplaces in the UK must be independently accessible to all, otherwise they constitute a barrier to work for a disabled person.

Article 19 - the right to independent living

Irrespective of the cost, the necessary support must be provided to enable and empower a disabled person to live independently. In a recent report by The Commons & Lords Select Committee on Human Rights that looked into Article 19, they concluded that without total compliance with Article 9, this would prove to be impossible for the vast majority of disabled people.

Article 20 - the right to the provision, irrespective of cost, of disability specific aids, adoptions, equipment, training and support. Without that being readily available to all disabled people, they will not be able to cope.

Article 25 - the right to disability specific medical treatment, medication and social care support, irrespective of cost. The Chairman of NICE has told disability organisations that they will need to demand and enforce this upon NHS Acute and primary Care Trusts, NHS Health & Commissioning Boards and GP's,

otherwise disabled people would be unable to cope with day to day living.

Article 28 - right to disability specific homes. This affects all planning law, all future new-built homes must be independently accessible to all, that includes one or two story blocks of flats, which will need to have lifts. This will dramatically increase development costs. Likewise all refurbished buildings and workplaces must be so compliant. (The Torpey Case is worth noting in this regard)

2.2 The effect of these articles will dramatically increase costs. To give you some examples the "dropping of footways" and tactile delineators with wayfinding lines on all footways in England alone will cost £10billion. The cost of an independently accessible roll-on-roll-off hackney carriage ranges from £44000 to £85000 each. Independently accessible housing will result in units being wider, requiring structural walls, as opposed to stud walls, increasing the cost. Because the number of units per development plot will be wider, less can be built per plot of land increasing overall costs.

2.2.1 All of these examples result from an acceptance of an assessment criteria based on the ability of a claimant to cope. Until such time as the Mobility Component assessment accepts that "getting around", requires total compliance with independent access, which has been accepted by the courts, the implications could and will prove immensely costly for the state. It would be wiser and prudent, at this stage, to make no change until post 2025, by which time legal compliance with all the articles must have been met or the UK face the consequences of failure.

3. How this affects the assessment criteria:

3.1 The mobility assessment is based upon the ability of the claimant to undertake some very basic day to day tasks. They do not deal with the ability of the claimant to have independent access within the home, the immediate area, to shop and go about day to day living as required by Article 9. Because of all the cuts being imposed on both central and local government, it is now seen by the LGA and DfT as impossible to meet compliance in removal of barriers to independent access. However, that excuse does not take into account the fact that legally since 2000 all local government have been required to become compliant, which patently they have chosen to ignore, that makes local government legally liable for their failures and have serious and costly consequences. The plan devised by Blair and disability advisers, gave them 25 years to plan and become

compliant. Few local authorities have a cohesive plan to meet compliance, which further renders them liable and incompetent.

- 3.2 Furthermore, Article 19 requires that irrespective of the cost, a disabled person should be given the necessary support to enable them to live independently and control their lives. The cuts to Social Care have restricted the ability of many disabled people to live with a degree of independence, thus here again, the courts will view this as an inability to cope.
- 3.3 Due to the Treasury imposed cuts, without the necessary disability specific aids, adaptations, equipment, training and support, irrespective of the cost, many disabled people will not be enabled to cope with day to day living, breaching Article 20. Due to cuts in social care or increased consequential costs for disabled people, many cannot afford to pay internet charges and have ceased to be on computer, others have never been trained to use computers, especially those with mental health or autistic conditions. Many visually impaired people, cannot afford the very costly software and hardware necessary to enable them to use the internet. Thus they are now excluded from the normal freedoms of association available to non disabled people. That is a breach of Article 20.
- 3.4 Without social care support being made available to all and the costs remaining affordable, many disabled people cannot function at all. In Kent KCC Social Services have been found guilty of overcharging disabled people and are being compelled to repay overcharged services.
- 3.5 In Kent we have a serious and growing problem surrounding disability harassment. This affects "Fear to go out". The local police have admitted they are powerless to act, other than in a mediatory way. ACPO have advised, "disabled people should not go out unaccompanied", their spokesperson went on to add, "in the case of blind people, they are clearly a soft target for the opportunist thief and should always travel door-to-door, rather than use public transport." That dramatically increases costs for disabled people and will need to be addressed. In some recent cases your assessors, Atos Healthcare, have demanded proof of harassment as the reason for fear to go out, by having reported crime numbers as evidence. This has resulted in a refusal by some police officers, as the affect would clearly skew crime figures adversely. Our Police & Crime Commissioner supports this reasonable viewpoint. This places disabled people in a very difficult and potentially costly position, if they want to go out, they need to pay someone to accompany them, that

will cost even at the minimum wage.

- 3.6 Getting around, is impossible due to failure to drop kerbs or introduce on all footways a wayfinding line. They are seen as too costly and unaffordable. To give you an example, Tunbridge Wells Borough Council recently with Kent County Council undertook a Local Transport Strategy with our Access Group and other local groups. This was conducted by two officers Hilary Smith and Bartholomew Wrenn. At the recent Local Transport Forum they were challenged as to why they had not incorporated our report and the requirements of Article 9 & 19 within the final version of The Strategy. The answer and I quote was:

"Our legal department were consulted and have advised us to ignore totally the demands of the access group and disabled people. They are unaffordable. We were not aware of the legal requirements of the ESLG 2000. Until such time as government makes it mandatory we will ignore your suggestions and demands."

Within Kent a similar attitude is being taken, promoted by Kent County Council, the local Highway & Transport Authority and principal service provider. Clearly, without enforcement, no barriers will be removed, consequently disabled people in Kent will require enhanced levels of mobility and care to enable them to live. The above comment made at a closed meeting is clearly discriminatory as it indicates that both Tunbridge Wells Borough Council and KCC will not be treating disabled people more favourably, as the Law requires. We recommend within our regulations relating to PIP's that additional powers be given to DWP to directly impose sanctions on local authorities that fail to remove barriers to independent access for all disabled people.

- 3.7 Atos Healthcare refuse to provide independently accessible transport (its is too costly) to convey disabled people to and from their assessment centre in Hastings. Many disabled people from our immediate area would find such a journey on public transport impossible or cause their health and wellbeing to be undermined by such a journey. Independent Tribunal's have accepted this view as reasonable.
- 3.8 Assessments must be undertaken by a qualified person, for example, in assessing a complex asperger syndrome this would need to be done by a consultant psychiatrist, not a registered nurse trained as a disability analyst, as a Tribunal has decided "she would not be qualified". Likewise the failure of assessors to accept written reports, many pages in length amounts to malpractice and we have already seen to it that one nurse has been struck off by the UKCC and can no longer practice as a

nurse, for discrimination and harassment. It is likely that the RCN will advise their members not to participate in such activities for fear of court actions which could lose them their professional status....that will increase assessment costs as a direct result.

- 3.8.1 The assessment should not be undertaken based on answering computerised questionnaire. The whole assessment process must take a full account of a claimants overall abilities to cope with day to day living, getting around the home; the local area; travel and be accompanied by a detailed access audit of the local area, shops, public buildings, local transport etc, rather than expecting the claimant to attend a centre, all assessments should be conducted where the claimant lives and within their local surroundings. Failure to do this will, I have already been assured, result in the courts taking the view that the assessment process is a "set up, designed to reduce support for a disabled claimant". It is clear to the lawyers representing The National Disability Cuts Watch Team, that as it stands at present, this assessment criteria will entrap the DWP and government in very costly litigation which will have for them, costly and unaffordable consequences.

4. **Fitness for work:**

It is correct to say that the vast majority of disabled people of working age would love to be able to find regular full time and fulfilling employment. The problem is that none of our business leaders were told of the implications of Article 9 of The Convention. The CBI view the unit cost of a disabled person as twice that of a non disabled person due to the amount of time off required for medical appointments etc. In the current situation employers have made clear that they would rather employ a young untrained non disabled person over a better qualified disabled person, "at the end of the day the costs will be less".

5. **The ripple effects:**

My members have asked me to add this section into the response. They can see no guarantees regarding many of the allowances, benefits that are linked to DLA being available under PIP's. Nor are they convinced that the levels of PIP's will enable them to afford the levels of support that they currently get. They have instructed me to say:

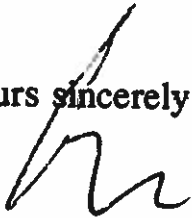
irrespective of cost, all support must be disability specific, and fully meet the day to day needs of all disabled people. That with regard to Mobility Allowance there will be a need to provide for the additional costs of a protected companion to avoid disability harassment and to meet the increasing costs of disability specific

equipment and support needed to enable us to get around and live an independent life. The current assessment takes no account of meeting these legal needs and rights .

I should add that The UN Commissioners Office have already expressed concern, that the policies of this administration are directly undermining the individual rights of disabled people in the UK. They also added that a failure to meet total compliance with all the articles of the Convention by 2025 may result in the imposition of sanctions by the UN on the UK.

Adding a personal note, because of the need to reduce the UK's debt, I question the wisdom of embarking upon a course of action that could potentially land the UK with ever greater debts. Reassess disabled people by all means, but leave things alone, until such time as we can afford to make all the costly changes required by The Convention.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Michael Coggles', written over the typed name.

Michael Coggles
Chairman

Member National Disability Cuts Watch Team

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