

**Response to a call for evidence by the House of Lords Select
Committee on The Equality Act 2010 and Disability
By The National Association of Deafened People (NADP)
Registered Charity No. 294922**

The National Association of Deafened People (NADP) welcomes the opportunity to respond to the call for evidence by the House of Lords Select Committee on The Equality Act 2010 and Disability.

1. Hearing loss is one of the most common forms of disability and the vast majority of those with a hearing loss are post-lingually deafened. The NHS Action Plan on Hearing Loss - <http://www.england.nhs.uk/wp-content/uploads/2015/03/act-plan-hearing-loss-upd.pdf> - concludes that 'hearing loss affects over 10 million adults and 45,000 children in the UK. This equates to 1 in 6 of the population and has an enormous personal, social and economic impact'. NADP is a national organization which exists to support people who use spoken language for communication and are disabled due to severe/profound hearing loss - deafened people. Many of our members were born hearing and so will have experienced life as both a hearing and deafened person. Acquired deafness affects not only the individual but also their family, friends and colleagues. The skills, ability and human need to communicate on equal terms is at the heart of equality for deafened people, since profound deafness reduces and in many cases destroys the confidence to communicate. NADP offers support and advice to help deafened people to regain their confidence and independence and thus to enjoy the best quality of life. Our response will reflect the views and needs of our membership and therefore the effectiveness of the Equality Act 2010 for deafened people. NADP is run for and by deafened people, and this response is written directly by people who actually experience deafness.

General

Question 1. Has the Equality Act 2010 achieved the aim of strengthening and harmonising disability discrimination law? What has been the effect of disability now being one of nine protected characteristics?

2. In our experience, the consolidated nature of the Equality Act 2010 has had the effect of diluting the strength of the Disability Discrimination Act. Employers and service providers seem to now be less aware of the needs and rights of disabled people but appear to be more aware of the needs and rights of the social groups in the other eight protected categories. Of course, disabled people may belong to more than one of those protected characteristics categories. Nonetheless, there are distinct differences between discrimination with, for example, a race, religious or sexual background (which is usually caused by the malign intent of the

perpetrator) and discrimination against a disabled person (which is usually non-malign and is the result of the lack of physical access to a facility. This lack of access causes socio-economic inequality).

3. Cases of sex or racial discrimination appear to have a higher priority in corporate "equality" policies than disability. Furthermore, disability is often addressed in a few words within a corporate policy with little evidence that the policy is actually implemented. For example, recruitment or corporate training videos are rarely subtitled.

Reasonable adjustment

Question 3. Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others who have duties under them? How does this apply in the specific cases of public transport, taxis, education and access to sports grounds?

4. A recent survey of our members (all disabled people with a hearing loss) indicated that 83% were reasonably familiar with or had a basic understanding of the Act. 77% had a good understanding of the reasonable adjustment duties but, of those, the majority consider the law could be clearer. Our members' experiences indicate that the understanding of reasonable adjustment by employers, service providers and others varies dramatically.

Comment - Our local Post Office has recently had a hearing loop fitted but it doesn't work. The postmaster said that the building belonged to the Co-op so it was not their responsibility to fit a loop

Comment - My employment experience was a result of around 5 years of delays in making reasonable adjustments which made it more difficult to claim due to the 6 month timescales. Whilst we had regular catch up meetings items remained outstanding from one meeting to the other whilst they were "working on it".

Comment - I couldn't begin to explain all the refused requests, subtle or very obvious. Many have sickened me and brought me to tears over my deafness. I have been avoided, left isolated and totally ignored by countless people once they knew I had no hearing.

5. Part 12 of the Act (Disabled Persons – Transport) goes into some great detail as to what is required to offer access to transport. However the majority of the legislation relates to those who have mobility problems and there is scant recognition of sensory disabilities. Major barriers still exist on the public transport systems for people with hearing loss. This is because, in so many cases, audible announcements (e.g. on railway platforms or in public transport vehicles) are not supplemented by visual means. Even in cases where in-vision information has been provided we find that it is quite often improperly programmed or inadequately visible. Additionally, there remains some resistance to assistance (hearing) dogs on public transport.

Comment - .On buses and trains my Hearing Dog and I have been pushed and shoved in all directions. My Hearing Dog is my lifeline but sadly there are many people who loathe dogs

Comment - On trains I often do not know the cause of a delay.

6. People with hearing loss will always struggle with audible announcements or performances. So this is particularly relevant at cinemas, theatres and sports grounds. However, our members' experience of educational establishments is, on the whole, more favourable in that reasonable adjustments are understood and applied.

Comment - I went to a New York Yankees baseball game in 2009. In the stadium there was a screen showing the text of what the commentator was saying so I was able to keep up with the game. In 2012 I was fortunate enough to go to the Olympic stadium in London. Despite all the big screens and technology there were no subtitles shown. I had no idea what was going on at times.

Question 4. Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?

7. Our members overwhelmingly consider that the law should definitely be more explicit on what constitutes a reasonable adjustment. However, there is no single consensus in how this may be achieved. Many suggested that the law should be enhanced by practical examples of reasonable adjustment in a range of circumstances. One of our experienced correspondents was of the opinion that

'the whole concept of reasonable adjustment is dubious as it supposes that discrimination may be reasonable, which should never be the case'

Another suggested

'Perhaps the easiest thing would be for a requirement that adjustments should be made that 'make it as near as possible for an individual who is disabled to achieve the same performance as those who are not disabled'

8. The economic problems of the past few years have made it far too easy for service providers to refuse requests for reasonable adjustment on the grounds of cost. So there certainly needs to be a re-balancing where any adjustment is equally reasonable from the point of view of the disabled person as well as the provider. From the point of view of our members, it is absolutely imperative that appropriate communication support is given. For example, it is not appropriate to provide a sign language interpreter if the deafened person does not use sign language, and the vast majority do not. At our public meetings, our charity provides communication support in various forms; including Verbatim Speech to Text (using Palantypists or Stenographers) and Lipspeakers.
9. Overall it was felt that real examples of reasonable adjustments should be made publicly available so that service providers can then realise what is possible. Consumers can then hold service providers to account by asking why they have not provided a similar adjustment to their competitors.
10. Similarly, where a government department such as the Equality and Human Rights Commission has disclosed specific examples of what Reasonable Adjustments could be made then companies not offering these Reasonable Adjustments should be made accountable.

Public Sector Equality Duty

Question 5. How effective has the public sector equality duty been in practice? How do you assess its contribution to the aims of the Equality Act 2010?

11. Any assessment of the performance of those bodies bound by the Public Sector Equality Duty over the past five years has to bear in mind that many of those bodies have been under extreme economic pressure during the period and many such bodies have experienced a decimation of staff numbers.
12. Having said that, we are firmly of the opinion that such public sector bodies are the worst culprits for ignoring the requirements of the Equality Act. In our survey over 50% of respondents stated that either their GP or hospital had refused their request to make a reasonable adjustment.

Comment -my Hospital has been petitioned many times about various adjustments which are needed to help hearing impaired people. They always declare their resolve to change their practices but in fact nothing happens at all. The situation is just the same as it was 5 years ago

Comment - Ironically, medical staff are the most ignorant of all things involving deafness. When I have tried to explain my profound deafness to them, they will shake their heads and say 'oh it doesn't matter'

13. Many councils and health authorities etc. drew up Equality Policies in the early days of the Act. However, this exercise was primarily a 'tick box' exercise and has not contributed to the aims of the Act. Few properly communicated those policies to their own workforce.
14. Even the Courts have failed to recognise the workings of the Equality Act in the way they deal with potential claimants.

Comment -When I went to my Employment Tribunal, there was no working loop on the front desk and I had to rely on someone with me to communicate with the staff. The waiting room was so noisy I found it very difficult understanding my barrister, despite having a STTR, and was very conscious that I may be speaking too loudly. When we asked for a quiet room, this was refused.

Oversight and enforcement

Question 8. How effective has the Equality and Human Rights Commission been in exercising its regulation and enforcement powers, and what contribution has this made to the impact of the Equality Act 2010 on people with disabilities?

15. From the point of view of disabled people and deafened people in particular, the Equality and Human Rights Commission has not been particularly effective in dealing with claims. From very early on, small charities such as ours felt discouraged in seeking a ruling from the Commission. The Commission has not actively engaged with charities like ours and we feel very much left alone in seeking support for our members.

16. It would appear that the EHRC has relied on enforcement being the responsibility of an individual to pursue independently. The EHRC has a system of providing a complainant with a standard letter for presentation to a service provider who has not made an appropriate reasonable adjustment. Our experience is that the individual then receives no further assistance from the EHRC and thus is left to his or her own devices. From the responses to our survey it was clear that whilst individuals felt that they had a right to greater equality, few had the time, resources or perseverance to pursue a potential claim.

Question 9. Could other regulatory bodies with a role in the effective implementation of the Equality Act 2010, such as inspectorates and ombudsmen, play a more significant part?

17. We are of the firm opinion that there is a need for an independent Disability Ombudsman. The role would include:

- Defining reasonable adjustment
- Publicising what constitutes reasonable adjustment
- Publicising what reasonable adjustments have been made by different companies grouped by size, type of company and when made
- Adjudicating in cases where reasonable adjustment has been refused
- Proactively requiring that similar companies make reasonable adjustments in line with their peers or in accordance with the recommendations set out in the EHRC guidance notes
- Enforcing the provisions of the Act

Question 10. Are the current enforcement mechanisms available to private individuals (through Employment Tribunals, County Courts and, in Scotland, Sheriff Courts) accessible and effective for people with disabilities, employers and providers of goods, facilities and services?

18. Our members are wary of the implications and costs of making any claim whatsoever. Those that have made claims have had very unsatisfactory experiences. Many people appear not to want to make a fuss and simply want to get on with their lives. Taking an employer to an employment tribunal not only involves a fear of losing their job but also any potential chance of future employment. This risk easily outweighs any potential gain. The process itself is daunting let alone the time and expense involved in pursuing a claim. The costs involved in pursuing a claim via an employment tribunal have increased dramatically in recent years and despite the apparent exemptions available to those on certain benefits, that avenue is now closed to many disabled people. Ultimately there needs to be some more clearly defined stepping stones in the process to make it clearer to all involved exactly what is expected which should alleviate any need for legal intervention and representation. If the correct processes have been followed then the time and cost could be greatly

reduced, and examples obtained which could be used to further the implementation of the Act.

Comment - My discrimination/dismissal case was split into two with the disability elements in the later stages. So I didn't get a chance to have these heard. The legal teams argued the order based on priorities of law, which I wasn't party to. The bottom line was that my employer had access to a legal team whilst I did not

Comment - The idea of going to court is so appalling. Therefore, I have never made any claims - enough is enough!

Recent changes to legal aid and the legal system as a whole have added further costs and barriers to the enforcement mechanisms and have the effect of deterring those who have experienced discrimination from seeking enforcement. Courts and tribunals themselves have been known to deny appropriate communication support to people with hearing loss!

19. There needs to be a simpler system which allows an independent view to be obtained of a particular request for a reasonable adjustment and where it is deemed to be a reasonable request for it to be dealt with by the independent body in a timely and professional manner so that the individual is able to continue working in an equivalent manner to their peers.

11. Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?

20. As suggested above, we would applaud the implementation of an independent and active Disability Ombudsman.

N.b Questions 2, 6 and 7 are not answered as these are beyond the remit of our charity.

2 September 2015

On behalf of NADP Trustees
Mrs Lidia Best
Chairman