

## **REPLY TO THE BAR COUNCIL WORKING PARTY'S PAPER**

### **"ENTRY TO THE BAR – INTERIM REPORT"**

**May 2007**

*"Right now, our society places people with disabilities in the margins. They are shuttled about on buses and seated in special sections, and we are encouraged to stay far away from them."*

Arthur Bradford, "Disabling Opinions", The Vice Guide to Sex and Drugs and Rock and Roll.

*"And why would a person with a mental health condition voluntarily seek to leave the income security of Incapacity Benefit to work when half of the employers say that they wouldn't recruit someone for that very reason?"*

Trevor Phillips, Chair, Equal Equality Review Panel, forward to the report "Fairness and Freedom: The Final Report of the Equalities Review", February 2007.

#### **1. INTRODUCTION**

2. The Lawyers for Disabled Equality welcome the chance to reply to the Interim Report prepared by the Working Party of the Bar Council on "Entry to the Bar". We note that the major part of the replies that are sought are specifically in relation to a series of questions annexed to the Interim Report at Appendix IV but we take this opportunity to ask questions which go more fundamentally to:

2.1. what questions the Working Party must answer; and

2.2. what answers to those question are.

3. The form of this report is:

3.1. firstly, a discussion of the nature of the problems;

3.2. secondly, a proposed answer to the problems;

3.3. thirdly, how the Working Party should recommend to the Bar Council that  
it proceed.

4. It is hoped that the representatives of the Working Party will take time to reflect on what is said here and consider again the very framework of their recommendations.

## 5. **THE NATURE OF THE PROBLEM**

6. The first of the above quotes was taken from “Vice”, a populist and radical young person’s magazine; the second from the report chaired by Trevor Phillips of the Equalities Review. Disabled people have a myriad of problems; that is agreed between all who show an interest.

7. One of those problems is that they are ignored. Within the debate about the Bar’s recruitment this a particular problem.

8. The Lawyers for Disability Equality was set up last year to do what disabled barristers and solicitors could do to participate in the action-based solutions. It is not a talking shop; it is an action shop.

9. We note with interest the Working Party's reading of the Equal Opportunities Report (see Interim Report, paragraphs 12 and 13). We know that, of course, each person's reading of that review is different. What we note the following:

9.1. the definition of an equal society in fact forms two parts, the latter part being as follows:

**"An equal society recognises different needs, situations and goals and removes the barriers that limit what people can do and can be"** – see FRER page 6 (*our emphasis*);

9.2. what the equalities review recommends is a ten-part plan i.e.

9.2.1. defining equality;

9.2.2. building a consensus on equality;

9.2.3. **measuring progress towards equality;**

9.2.4. **transparency about progress;**

9.2.5. **targeting action on persistent inequalities;**

9.2.6. a simple legal framework;

9.2.7. **more accountability for delivering equality;**

9.2.8. using public procurement and commissioning positively;

9.2.9. **enabling and supporting organisations in all sectors;**

9.2.10. a more sophisticated enforcement regime. (*our emphasis*).

10. These are expanded on in the report but we applaud this ten-point plan. The message for disabled people is clearly laid out: without change in the way decision-makers decide, the rights of disabled people will largely be ignored.

## **11. The Disability Rights Commission**

12. In 2005 the Disability Rights Commission, a Government-funded body, produced its guidance under the heading “The Duty to Promote Disability Equality”. We turn to this because this seems to us to underlie both the law pertaining to disability and public authorities as it now is but, more importantly, a blueprint for action amid all public authorities. In particular it lays out what action a public authority must take under its general duty. We think that there is no doubt that education in order to become a barrister is a public duty but, if we are wrong, it matters not: the point is that a public duty in the context is also a good guide for one taking decisions in the private sphere.

13. How the decision making process should be dealt with in the second chapter.

The DRC's understanding of the importance of the disability equality duty which is sought to be embodied by the duties on private bodies is clear: paragraph 2.6 –

**“The understanding that to deliver true equality of opportunity for disabled people requires more than treating them the same as everyone else underpins the requirement to combat discrimination (notably the Act's requirement to make reasonable adjustments) and to promote equality of opportunity”.**

14. In paragraph 2.12 the DRC say this:-

**“Underpinning principle: the need to take steps to take account of disabled person's disabilities, even when that involves treating disabled persons more favourably than other persons”.**

15. We note that further on at paragraph 2.25 to 2.27 the DRC assessed the role that positive attitudes play in allowing people with disabilities to live and thrive.

**“While many people have positive attitudes towards disabled people, some express pity, fear, lack of respect and/or contempt. Demeaning stereotypes, or simply the absence of any representation in public images both have a very negative impact on disabled people's lives”.**

16. This we think is so as far as the barristers' and solicitors' profession are concerned. We wonder when disabled people will take their place as people who uphold the law and advocate about the rights of others.

17. Under the heading “Participation in Public Life” the DRC note that:

**“This is both an end in itself and will promote equality for disabled people more generally”.**

18. We think that one participation in public life is the role of advocate.

19. Later on the DRC discuss how to meet the general duty and, “required reading” we think is paragraphs 2.45 to 2.68. The DRC emphasise that the actions required by public authorities are the following:

19.1. **“mainstreaming”** – an impact assessment;

19.2. **gathering and analysing evidence;**

19.3. **prioritising remedial action;**

19.4. **involving disabled people;**

19.5. **public reporting** – transparency.

20. In addition the DRC analysed the following important mechanisms for successful compliance with a new duty:

20.1. **leadership;**

20.2. **staff expertise and training;**

20.3. attention to the working hours: partnerships and procurement;

20.4. **focusing on effective change;** and

20.5. **efficient use of resources.**

21. We note the following:

21.1. the requirement for public authorities is to “mainstream” disability equality into all activities and decisions;

21.2. the impact of the public authority’s mainstreaming are to be gathered and analysed in a predictable form;

21.3. disabled people are to be involved at every stage of the process:  
see 2.52 to 2.56;

21.4. it is vital that this is transparency so that the body is in a position to publish on an annual basis its goals and the impact assessment about their achieving those goals;

21.5. the goal of leadership from the top is paramount in order to mark a need to changing the impact of the public sector;

21.6. the role of partnerships is paramount in assessing the “whys and wherefores” of any particular problem: see 2.64.

22. **THE WAY FORWARD**

23. The key thing is to take seriously the public sector duty for disability equality and, by extension, the duty to ensure equality no matter what race, sex,

sexuality religious belief, age and disability you are. Otherwise it seems obvious that the Working Party will “do it’s job” and it’s report will be shelved.

24. It seems to us to be addressed only by the following course of action:

24.1. the public stating of:

24.1.1. the problems with the Bar and Equal Opportunities at the moment;

24.1.2. that the immediate action to take to address the problem of the kind outline below is to occur;

24.1.3. that the Working Committee and the Bar don’t have “the answer” and inviting affected “minority groups” to participate;

24.2. the setting-up of a partnership consisting of:

24.2.1. a team from the Bar Council, of whom one must be appointed from the Disability Committee;

24.2.2. representatives of each and every school involving Bar training;

24.2.3. the Court service; and

- 24.2.4. representatives of the disabled community along with the various race, religion, sex and sexuality organisations;
- 24.3. the Partnership:
  - 24.3.1. will have a life of at least 5 years;
  - 24.3.2. will analysis and make recommendations about Equal Opportunities at Bar School;
  - 24.3.3. will take soundings at regular intervals of all of the group's attitude towards the "current state of play" and any problems that they may have either in an individual case or as a group to be analysed and, if appropriate, solved;
  - 24.3.4. particular respect for the disabled, provide a route open for every single disabled person to make a comment or complaint about a particular experience at Bar School either through the Lawyers for Disability Equality or on their own;
  - 24.3.5. will make annual reports for at least five years over the progress made;
- 24.4. more pressingly, the Committee should require of each of the schools an access report by disabled person specialists to assess whether the school is capable of access by the many kinds of disabled

person who may come there now; along with annual reports for at least five years over the progress made.

25. One noticeable problem with the symbols of authority is their refusal to admit that they may be wrong in their initial approach. The LDE notes that the Working Party has not adopted this approach. It is a big step to admit that you are just as fallible as the next man when it comes to equality but it is an important step. The LDE itself admits that it may well be wrong in many of its proposals but, with the DRC and therefore the Government's backing we propose the above amendments to the Working Party's Report and look forward to reading its final report.

John Horan

Chair of the Lawyer for Disability Equality