

Disabling Practice Enabling Nurses? Disability Network Newsletter

Number 9 Winter Edition

Letter From the Editor

I would like to start by wishing everyone Seasonal Greetings.

The Disability Rights Commission has now started it's own e-mail newsletter, and I am attaching the first edition, recently circulated, in addition to this newsletter, with their permission. You can sign up to receive it on a regular basis at: <http://www.drc-gb.org/>

The membership of this newsletter is growing almost on a daily basis. This has generated discussion about the possibility of publishing it in paper form, though, due to the expense involved, and thus the need for sponsorship, it is some way off at present. It would help these deliberations if you could let me know if you would prefer to receive it in paper form, would like a paper form as well as the email newsletter or if you have colleagues that would like it in paper form and could only receive it that way. Thank you for helping in this matter.

I would also like to thank all those who have contributed articles to this newsletter, and encourage more people to become actively involved in the sharing of information and practice.
Rachael Spain

GOVERNMENT SLAMMED FOR SNEAKING IN 'CRUEL' DISABLED LAWS

MINISTERS were today accused of pushing through controversial measures, which will see disabled people going for MoT-style health checks before they receive benefit, by the back door.

The changes to the incapacity benefit, which caused outcry among Labour backbenchers when they were first announced in July, were starting to be phased in from today. MPs will not debate the regulations until Thursday.

The Liberal Democrats said it was outrageous that the measures were being brought in before they are fully debated in Parliament and described the new rules as "cruel and unnecessary".

A spokeswoman for the Department of Work and Pensions said the changes were always intended to be brought in today - at the same time as the new JobCentre Plus initiative. "There is no question of anything being sneaked in," the spokeswoman said. "This has always been timed for the introduction with JobCentre Plus. The regulations will be debated on the floor of the House at the earliest opportunity, which is Thursday."

Lib Dem work and pensions spokesman Professor Steve Webb said: "It caused outrage when the Government announced these controversial changes last July without telling Parliament first. "Now we find that the changes will be introduced by the back door, before any Parliamentary scrutiny."

The regulations specify that all 16 to 60-year-olds who have made a claim for Incapacity Benefit must attend a work-focused interview "as soon as reasonably practicable after the claim is made".

Anyone who fails to take part in such an interview following a new claim will be treated as though a claim has not been made, and no benefit will be paid. The regulations were being introduced in a number of pilot areas from today. They will be debated in the House of Commons on Thursday.

"The Government has been talking for years about the million disabled people who want to work, but has made no progress," Professor Webb added. "Now they are threatening to withhold benefit from disabled people who are unfit for work, unless they come in to talk about job prospects. "Given the many barriers to work already faced by disabled people, and the discrimination that many suffer, forcing them to discuss jobs on pain of loss of benefit is cruel and unnecessary. "Disabled people who are able to work should be supported and not threatened. The benefit system itself is a barrier to disabled people taking part-time work. "It relies too much on an 'all-or-nothing' notion of disability. "The benefit system needs to be changed to allow people to combine part benefit with part-time work. This would do more good for disabled people than new threats by the Government."

Work and Pensions Secretary Alistair Darling told BBC Radio 4's Today programme: "From

today, in about 50 areas of the country we are introducing what I believe is an important development in our welfare reforms. Everyone of working age, not just people on incapacity benefit, will, as a condition of receiving benefit, have to come in for a work-focused interview to see what help and support we can give them." Mr Darling denied that the changes had been smuggled through, and said that he had ensured that a debate on the regulations would take place in Parliament after opposition parties failed to ask for one. "I announced I intended to do this in July. I said we would table regulations so that MPs could see them. I did that in September. When you make secondary legislation, it is laid before the Commons and MPs can object to it. Sometimes these things don't get debated for months. By the middle of last week, I discovered that neither the Tories nor the Liberals had asked for a debate, so I asked our whips to arrange for a debate. The first slot I could get was this Thursday."

Mr Darling added: "The crucial thing is that I believe that these regulations will mean, for the first time, we can make sure that everyone of working age gets the help and support they are entitled to, because our objective is to make sure we get as many people into work as possible."

By Jane Merrick, Political Correspondent, PA News. 22 Oct. 2001

Disability Rights Commission – Annual Review

The Disability Rights Commission, set up by Act of Parliament, celebrated its first year of success at the launch of its Annual Review held at Saddlers Wells on September 25th. Bert Massie, DRC Chairman, reported that the review "revealed the shocking extent of disability discrimination in this country".

Achievements, from a standing start, include establishing an accessible help-line dealing with 65,000 calls, assisting in more than 2,000 discrimination cases, distributing a quarter of a million pieces of literature on request and setting up a conciliation service. Mr Massie called for a new Disability Act to plug existing gaps and extend legal protection to people with HIV and those with cancer from the point of diagnosis.

The Minister for Disabled people, Maria Eagle MP, congratulated the Commission and

acknowledged the need for such an enforcement body. At the launch, referring to her background as a lawyer specialising in employment cases, she stated, "ending up in court is a last resort". The minister went on to endorse the vision of the DRC which is 'a society where all disabled people can participate fully as equal citizens', but stated that though it "don't sound like much to ask, there's a long way to go".

Bob Niven, DRC Chief Executive, suggested that the real long-term test of the effectiveness of the work of the DRC would be an increase in employment rates and qualifications among disabled people, and significantly "improvements in the quality of health care" they receive. He stated that a "significant mind set shift" is required. One of the cases that the DRC is currently taking to test the law involves a teenage boy who has been refused the opportunity to participate in school trips because he is diabetic. A key sector to be targeted by the DRC, which makes life difficult for disabled people, which Mr. Niven identified, is the area of health and social care.

The DRC practices what it preaches and has made this first review available in an unprecedented range of accessible formats including a website, easy read version, large print, audio tapes and an accessible CR ROM version. Bert Massie made it clear the DRC's vision can only be realised through establishing partnerships with employers and service providers. The review is available via DRC's help-line (Tel 08457 622 633, Textphone 08457 622 644, e-mail enquiry@drc-gb.org)

Letters

At a self-advocacy network meeting last year, a woman with an intellectual disability said: "People always talk about ramps into buildings. What about ramps in to minds? We need ramps into minds."

Anon.

I am a Stroke Specialist Nurse at Hope Hospital and am wishing to do a qualitative/quantitative study into Trial Without Catheters post stroke. I wish to find out where both acute and rehabilitation stroke units are situated, in preparation for this study. I would be

grateful if you work in a stroke unit, if you would send me the unit's address and phone number.

Please send details to:
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email: scross@hope.srht.nwest.nhs.uk

DRC National Conference: Education for life- Opportunities for disabled people, 3rd December 2001.
Conference notes by Victoria Eathorne on 6 December 2001

Bert Massie

Opened the conference and informed audience about the achievements of the DRC during its first year. This included 65000 calls, 2000 discrimination cases. He emphasised that DRC's mission is the participation of disabled people in society. The DRC wish to focus on integrated education, responsive health and social care systems, opportunities in employment, legal framework for discrimination, extension of the DDA. The introduction of the SENDA is a significant step in achieving these aims in promoting equality for disabled people in education from school to university education. This will bring economic benefits to the society as well as disabled people themselves.

Rt. Hon. Estelle Morris, Secretary of State
Department for Education and Skills

She highlighted four main issues in her speech: mission and vision for the government, legislative framework, financial support, and educational awareness. She had personal experience of a child with special needs and disability should be integrated rather than being dealt separately. Time needs to be spent on thinking and developing policies for the development of culture and social justice in education. More than half of the disabled students leaving education have no qualifications. Everybody should have opportunity to participate in the mainstream education if they want to. Some Further and Higher Education institutions have refused

access to colleges by disabled students as recent as last year. They should plan strategically support and access issues for these students. Learning and Skills Council is working with the DRC to raise awareness and to promote equality of opportunity with a clear focus. The Labour Government increased funds for the access to school by disabled children from £8m in 1997 to £20m in 2000 and plans to invest £220m over next three years and £170m for post-16 education. The informative education program is needed for teachers of disabled children and adults.

Judy Heumann, Former Assistant Secretary,
US Department of Education

She advocated independent living and empowerment for disabled people based on her own experience as a wheelchair user. She looked at the role played by education in the rehabilitation of disabled people. She argued that education of disabled children have faced challenges in the US due to the need for education of the teachers of disabled children to provide least restrictive environment. Identifying these children and providing them with adequate support such as therapists have been a major challenge. Parents have an important role and say in the placement of children. We should learn about the difference and respect the difference and provide support and vocational education. However we need clear administrators who would be leaders. Education is important to have qualified employees for disabled people and employers. The transitional services to enable disabled people form education to work are needed for a successful transitional outcome. These include the placements, individual placement plans and monitoring and enforcement for these plans. National Council of Disability in the USA has recently focused on university and college graduates due to the high unemployment rate for disabled people. Upon a question by Tim Boswell, a Conservative MP, she outlined developments in the legislative framework for the Internet access in public institutions in the US such as Section 508. State provides also for financial support for the purchase of hardware and software for colleges and universities.

Dr Philippa Russell CBE Director Council for
Disabled Children, DRC Commissioner

She emphasised a learning culture and disability equality for all disabled people and welcomes

access to achievement for all. Only 40% of disabled children gained GCSE grades A- C as compared to 56% for non-disabled children. Only 15% and 7% of primary and secondary schools are accessible for disabled children based on a DRC survey. She focused in her speech on SEN support, DDA duties, auxiliary aids and services, planning duties, and physical access. Progressive planning helps improve access to curriculum by disabled children. Reasonable adjustment index for inclusion includes challenge, standards, resources, costs, practicality, SEN provision, health and safety, interest of other pupils. Multi-agency collaboration with health and social services is essential to promote inclusion. Therefore the National Service Framework should be more inclusive and valued added and should put citizenship into the agenda. For example children could be denied access to schools due to "no lifting policy" for health and safety reasons. However the alternative of using nappies is unacceptable.

Gerard Kelly, Lecturer, law, Manchester College of Arts and Technology, VP, National Association of Teachers in Further and Higher Education.

He outlined the implementation schedule of the Part IV of the DDA as amended by the SENDA for post-16 education providers: less favourable treatment (September 2002), aids and services (September 2003), Physical adjustments (September 2005). A number of issues need to be noted for the implementation of the SENDA: financial support for colleges and universities, financial support for disabled students in the form of DSAs (disabled students' allowance), training of staff. There should be overall support in the society, full civil rights of disabled students, and well structured funding. There should be rigorous equal opportunity policies.

Stephen Alambritis Federation of Small Businesses

He provided background information on the role played by small businesses in the UK economy and emphasised the role played by them in the employment sector. Small firms constitute 97% of all employers and account for 40% of the Gross National Product. They offer 2 million jobs and spend £50b. Getting qualifications is essential to get employment. The Federation of Small Businesses works together with the Learning and Skills Council to promote training

opportunities for disabled people. (Learning and Skills Council is a statutory funding body for the further education sector empowered by the Learning and Skills Act (2000))

Linda Kelly Trades Union Congress

She provided background information on the role played by trade unions in promoting work opportunities for disabled people. Unions have structures to employ disability officers to advise on developing such opportunities. Trade union learning representatives encourage life long learning in the work place in collaboration with other partners. For example Barclays Bank Learning Centres, BT, Boots are good examples in recruiting and training for disabled people. TUC support SENDA and encourage inclusion of disabled people in education settings.

Dr. Peter Lavender. National Organisation for Adult Learning

He emphasised inclusive learning and leaping the divide in education. We need to move way from labelling, and provide equal opportunities for disabled people in learning to succeed. In the case of people with mental health problems we need to look at lack of energy, lack of confidence and lack of concentration, mood changes.

Wertheimer, A. (1997) Images of possibility: creating learning opportunities for adults with mental health difficulties, (Leicester, National Institute of Adult Continuing Education).

Wertheimer (1997) argues that education for people with mental health problems bring many benefits for them in dealing with these problems such as empowering them, increasing their work skills, making friends, valuable resources, and challenging stereotypes.

Peethi Manuel Parent

She described her personal experience in bringing up a disabled child with cerebral palsy in educational context

Workshop questions: getting the right stuff in education

What practical support is needed locally, regionally, and nationally to secure positive change?

What would represent success?

How can we improve communication and understanding between education stakeholders and employers concerning potential of disabled students?

What approaches or strategies have resulted in disabled students from school, college, and university in securing employment?

My own perception is that this was a very useful conference and highlighted the need for a multidisciplinary approach in partnership working between Health and Social Care to enhance opportunities for disabled children and adults in education as well as improved education of teachers to facilitate the equality of opportunity for disabled people. However there is still a long way to go to achieve a society where all disabled people can participate fully as equal citizens, the DRC is committed to this and education is important to disabled people of all ages as it is essential for employment, personal and professional well-being and the economic well-being of our society. One may also assume that SENDA only affects disabled children but it affects all people with a disability of all ages in any profession it was interesting to note the TUC strongly supports SENDA AND THE IMPLICATIONS THIS WILL HAVE especially on lifelong learning. The conference was mainly attended by disabled people themselves, however there is a need for more teachers and lecturers to show a true commitment to equality, as they have the authority to make changes happen. I did leave the conference inspired and with much enthusiasm for the implementation of SENDA next year.

Useful References

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Social Capital and People With Learning Difficulties / Riddell, S.; Baron, S.; Wilson, A. STUDIES IN THE EDUCATION OF ADULTS - 1999; VOL 31; NUMBER 1; Pages: 49-65

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DISABILITY AND EDUCATION IMPLICATIONS FOR THE HEALTH SECTOR

(Michael Brothers, Special Projects & Co-ordination Manager, Disability Rights commission (DRC), reports on recent developments in education law for disabled people – focusing on post 16 provision. Some implications for best practice in the health sector are also identified.)

The Disability Discrimination Act (DDA), 1995, provides individuals with the right to challenge discriminatory behaviour through the courts or tribunals. Until the passing of the Special Educational Needs and Disability Act (SENDA), 2001, provision of education for disabled people was not covered by civil rights legislation. Addressing education at all ages, this new legislation will have long-term implications for developing and promoting equality and inclusion for disabled children and young people. This is

not just symbolic, but provides a legal basis for mainstreaming of disability.

DRC has been working in tandem with this legislative development, to produce two Codes of Practice. These Codes deal with School and Post-16 Education. DRC has recently concluded a formal public consultation on these Codes.

Once comments and further legal advice have been considered, enhanced Codes of Practice will be presented to Parliament for approval, followed rapidly by dissemination throughout the education sector. It is anticipated that this authoritative and statutory guidance will be issued early next year, with the main body of provisions and codes coming into force during September 2002.

SENDA is, in effect, an amendment to the DDA and therefore only protects people who are defined - as having impairment - according to that Legislation. This is not ideal, because the identity of disability in the DDA is based on an individual's ability to carry out "Normal day-to-day activities". So, for example, "inability to concentrate on a task requiring application over several hours" is not considered to be disabling, because concentration over a long period, however common for students taking exams, is not considered to be a "Normal" day-to-day activity.

According to SENDA, discrimination can occur in two ways.

- When a responsible body treats a disabled person **less favourably** for a reason relating to the person's disability, than it treats (or would treat) a person to whom that reason does not, or would not, apply and that treatment cannot be **justified**. [s28S(1), Sch 4C paras 1 or 5]
- When a responsible body fails to make a **reasonable adjustment** when a disabled student is placed, or likely to be placed, at a **substantial disadvantage** in comparison with a person who is not disabled. [s 28S(2), Sch 4C paras 2 or 6]

The new law affects all education and training, but specifically addresses admission to courses, exclusions and provision of "Student services". This latter phrase refers conclusively to provision, not only education, but also residential

accommodation, leisure facilities, catering, libraries, careers and welfare services.

The post-16 sections of the Act apply only to certain types of providers [ss 28U and 28R and Sch 4C paras 1 and 5]. These include:

- Institutions in the higher education sector;
- Institutions in the further education sector;
- local education authorities securing further education, adult and community education or providing the statutory youth service;
- schools providing further education for adults.

Through SENDA, it will be unlawful for institutions to unjustifiably treat a disabled person "less favourably" for a reason, which relates to the person's disability. It will be unlawful for an institution to turn a disabled person away from a course, or mark them down in an assessment, because they had dyslexia or had a hearing impairment. It is important for trainers and lecturers to avoid making blanket assumptions, based on stereotypes of disability. This is a particular pitfall amongst health practitioners.

Part of not discriminating, of course, concerns making "adjustments". If any arrangements at the college place a disabled person at a "significant disadvantage", the Institution is required to take such steps as are reasonable to prevent that disadvantage from occurring. This might include changes to policies and practices, alterations to course requirements or physical features of a building, the allocation of resources such as interpreters or other support workers, the delivery of lectures in alternative ways or background materials being made available in various formats.

The obligation to make adjustments will also require educators to look at some core issues. It is not expected that academic standards should be lowered to accommodate disabled students. Indeed, a justification for "less favourable treatment" and criterion for determining whether or not an adjustment is "reasonable" will be the maintenance of academic standards. This cannot be used as a blanket excuse, as Educational Institutions will need to think through the implications and justify their position. Other

elements of the justification rule include: Cost, practicality and disruption to the Institution or other students.

Educational establishments are not required to replicate other forms of support already available, such as the Disabled Students' Allowance (DSA). However, support of this nature may be necessary for those who do not qualify, most notably post-graduate students.

Institutions are required to identify the special educational needs of individual students. In addition, they also have an "anticipatory" duty to plan and make reasonable adjustments for disabled people as a homogenous group. It isn't good enough to brush off these provisions, because you don't think the college has any current disabled students, or is likely to in future. Almost certainly, you will be wrong.

As ever, there are loopholes in the law. Work placements are not covered, except where an individual is contracted by the Sponsoring Organisation. This is unfortunately not very common.

A further gap arises over the coverage of professional and qualifying bodies. The Government has already recognised this difficulty and has undertaken to plug the gap once legislative time permits. The problem, basically, rests with courses where the entry and examination requirements are set by an external body. Whilst an Institution is required not to discriminate in admission or examinations, its freedom of action may be constrained by the requirements of a Professional Body. DRC has contended, however, that such bodies are covered by DDA provisions on Trade Organisations.

Redress can be sought through conciliation or the courts from September 2002. However, provisions relating to auxiliary services such as interpreters do not come into force until 2003 and adjustments to physical features are not legally required until 2005.

Education Establishments have already had responsibility under the Employment Provisions of the DDA, although Higher Education Funding Council records do not demonstrate a very positive situation. The Government believes that there are about 15,000 disabled people working in higher education. Accordingly to the Higher

Education Statistics Agency (HESA), there are in fact only 1,060 disabled people employed by the sector. Either higher education institutions are failing to recruit and retain disabled people adequately, or there is a climate of fear about declaring a disability within the sector.

If academic institutions and qualifying bodies lack such diversity, it is hardly surprising that health professionals emerge from college with very medical – opposed to social – approaches to disability. Clearly, employing disabled people as trainers or lecturers has greater worth than just providing jobs, but generates different perspectives.

Accessible and more integrated education will feature as a key priority for DRC over the next year. Work will include:

- Publish guidance, information and best practice tools to support the Education Codes of Practice;
- Establish an Education Conciliation Service; and,
- Undertake a major promotional campaign.

Many institutions have been working to guidance set by the Higher Education Funding Council (HEFC) and these changes in the law will simply assist to build on a track record of best practice. Changes of this kind will not involve dramatic transformation for those colleges with such a reputation. The experience of disabled people is however patchy and this new legislation will help to make provision more consistent, equitable and further drive standards upwards.

The principle behind this legislation is that disabled people should have the same opportunities as non-disabled people to benefit from education. Surely, this is inextricably linked to the fundamentals of learning and thus motivating educators to challenge us all.

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Disability Rights Commission to Target Health and Social Care Sector

The Disability Rights Commission [DRC] has recently held meetings with interested parties from both the health and social care sectors concerning the provision of services, which are not discriminatory. Although public perceptions are that disabled people are getting the health and social care that they need, the work of the DRC shows this to be far from reality in the experience of many disabled people.

Key issues which are problematic for many disabled people who use health and social care facilities include;

- ÿ Attitudes and access to health and social care services
- ÿ Communications between professionals and disabled service users
- ÿ Denial of necessary surgery / treatments because of disability status
- ÿ D N R notices, which reflects a low opinion of disabled people's lives
- ÿ Establishing disability equality within the culture of health and social care
- ÿ Poor links between health and social care providers

The DRC provides advice, conciliation and legal enforcement. Its vision is for '*a society where all disabled people can participate fully as equal citizens*'. However services are sometimes wholly inappropriate and tend to prevent full participation. A case reported at the meeting involved a married disabled woman with small children who required some adaptations in her kitchen to allow her to use it. Wanting to become more independent within her own family she approached her local authority for assistance. Assistance was not given since the local authority took the view that her husband should take on this major caring domestic role. Yet he was in full time employment, supporting the family financially.

One member of the discussion group reported that he had recently had two stays in a London hospital and found that his needs as a disabled person were fully accommodated. In fact he reported that nursing and other staff appeared to be very well informed about disability issues. However, it was agreed that generally there is limited awareness of our obligations under the DDA and the decision by the DRC to target the health and Social care sector was welcomed as a necessary stimulus for more improvement.

RCN representatives at the meeting urged the DRC to consider making health and social care issues the theme for their second annual conference due to be held on the international day of disabled people in 2002.

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