



## **Select Committee on the Equality Act 2010 and Disability**

### **Call For Evidence**

### **Submission by the Down's Syndrome Association**

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## **Introduction**

The Down's Syndrome Association (DSA) is a national charity providing information, advice and training on all aspects of Down's syndrome to people with Down's syndrome, their families and professionals. The DSA is a Registered Charity established in 1970 and has a membership of over 20,000 and more than 120 affiliated groups across the country. The Association operates in England, Wales and Northern Ireland.

The following submission is based upon evidence gathered from the DSA helpline, email service, training events, information days and projects over the last twelve months. Much of the evidence is in relation to education providers and also includes providers of services to the public, clubs and employers. In this submission we use the term 'service provider' as a general shorthand term. We have concentrated on the questions where we have concrete evidence to support our views.

### **Q 3 Reasonable adjustment duties**

The DSA regularly receives calls specifically related to the provision of reasonable adjustments. Evidence indicates that whilst most callers to the helpline have awareness that the individual they care for is being treated unfairly, they are not aware of the legal duty to provide reasonable adjustments. Families usually seek advice from the DSA following a refusal to their request for reasonable adjustments from a provider (although they do not necessarily use the terminology). The reason for the refusal is generally because:

- a blanket policy is in place
- the service provider does not believe the Equality Act applies to them
- the service provider is ignorant/negligent of their duty with regard to reasonable adjustments.

#### **Case 1 Blanket Policy - (FE College)**

A young man of 21 with Down's syndrome and a number of associated medical conditions which affect his stamina and leave him very tired.

The young man was offered a place on a college course subject to his meeting the attendance and punctuality requirements for an initial 6 week period. If these were not met, the place would be withdrawn. The college did not consider whether reasonable adjustments would have been appropriate due to the young man's medical conditions. With support from a DSA adviser, the parent wrote to the college quoting EHRC guidance for FE providers, but the college has yet to respond.

#### **Case 2 Blanket Policy – (Moderate Learning Difficulties Special Secondary School)**

A parent and her 11 year old son made a visit to their local MLD school prior to starting the following September. The only other special school in the area was for children with severe learning difficulties and would not have been appropriate for the young man. During the visit the parent asked a member of staff about toileting issues as her son needed support and was asked 'Have you chosen the right school?' and urged to look elsewhere.

Following a discussion with a DSA Information Officer the family successfully challenged the school's stance and a toileting plan is now in place.

### **Case 3 Blanket Policy** – (Exclusion from FE college specialist facility)

A young man of 17 has a history of challenging behaviour which was well managed at his previous school. During his first term in a new college the boy was suspended four times for incidents involving pushing or slapping (the young man has limited communication which impacts upon his ability to express himself). Following the final suspension parents were called in to discuss their son's future placement in line with the college policy. There was no evidence of reasonable adjustments having been made for the young man's disability to support his communication needs and the behaviour which resulted from them.

The parents appealed against a decision to exclude the young man permanently quoting the Equality Act and SEN Code of Practice and won. The father of the young man expressed his concern that not all parents in a similar position would have had the ability or confidence to make a similar challenge.

### **Case 4** – (interpretation of reasonable adjustments).

A young man with Down's syndrome has been visiting Butlins for a number of years with his mother and elderly grandmother. This year his mother asked a member of staff if they could go into a wrestling match early before the arena became too busy. This was agreed, however the family were picked up entering the arena by cameras and subsequently approached by another employee who told them they would have to leave and join the general queue as "Butlins treats everyone equally regardless of difficulties". On their return home, the family contacted Butlins to complain and was given the same statement, "Butlins policy is to treat everyone as equal."

The case is yet to be resolved so it is not yet clear if this is a blanket policy by Butlins or a misinterpretation of their Equality Act training by employees.

In all four cases the service provider showed an ignorance of their duties under the Equality Act and failed to gain an understanding of the needs of the young person which would have enabled them to put appropriate support in place.

Preconceived ideas about someone with a disability and their needs, based upon ignorance can often be at the root of a reluctance or refusal to make or even consider reasonable adjustments.

### **Case 5** – Barriers to inclusion.

A mother wrote to a local drama group asking if they would consider auditioning her son (who has Down's syndrome ). She mentioned his commitment to former drama clubs and workshops and his ability to learn lines and choreography. She also mentioned that his younger brother (by a year) was interested. She asked if the group had an Equal Opportunities Policy.

The response began with the following statement and went on to list a number of barriers:

*'I have made some points below that you might want to consider regarding whether we are a potentially suitable group for your son to join. I have been as honest as I can with regards to our current set up.*

*For information we don't currently have any members with a disability. This isn't a conscious*

*decision but one that has arisen purely out of circumstance.*

*We don't have any wheelchair access, the rehearsal room is up a flight of stairs and there is no disabled toilet which makes a physical disability impossible to manage.'*

The DSA believes the parent in this case is making her own submission to the Call for Evidence on The Equality Act 2010 and Disability.

In addition to the cases highlighted above, we have regular queries relating to equal access to school trips and to full time education for children in reception class.

### **Positive examples**

Information from the DSA's training and assessment services and its employment programme ([WorkFit](#)) provide some positive examples of the understanding of reasonable adjustment duties.

Prior to employing a person with Down's syndrome all employers registered on the WorkFit programme receive training which includes their duties under the Equality Act and practical advice on how to make reasonable adjustments for the prospective employee. This additional training and support provided by WorkFit has improved outcomes for people with Down's syndrome in employment. Registered employers are more open to suggestions of how they can develop their recruitment practices, be more inclusive and meet the needs of people with Down's syndrome.

However it must be noted that age discrimination still does happen as some employers in the first instance continue to request the candidates' date of birth.

Reasonable adjustments made by WorkFit employers include:

- an accessible two stage interview process which entailed an informal 20 – 30 minute meeting followed by a trial day
- making an individually tailored induction pack in an easy read format
- allowing regular breaks – of particular importance in the hospitality trade as standing for long periods of time can be problematic for people with Down's syndrome
- Most WorkFit employers have provided their new employees with a mentor to help them understand the workplace better.

[This blog written by one of our WorkFit development officers](#) provides evidence of the successful implementation of reasonable adjustments in the workplace and the positive impact this has upon employer and employee.

### **Q 5. Public Sector Equality Duty (PSED)**

The DSA provides training across the country in education, health and social care settings to support the inclusion of people with Down's syndrome. It sees many excellent examples of

environments which support diversity and inclusion. Whilst the DSA has no specific data to measure the effectiveness of the public sector equality duty, it believes its existence can both encourage diversity and inclusion and enable individuals to challenge the actions of public bodies. The pattern of training requested from the DSA over the last year shows some disparity in the uptake of training between sectors of public services and areas within those services

- 79% of training was delivered in education establishments or to education professionals.
- 16% to a mixture of social care providers and social workers
- 6% to health professionals.

This could be an indication of a greater commitment amongst education professionals to their equality duties. However parents are powerful advocates for their children and are more familiar with the education system so more confident when mounting a challenge. There is also additional education legislation to promote inclusion in schools.

The breakdown of the 79% education training by the DSA within phases of education last year is also significant.

- 90% of training requested by primary schools
- 6% by secondary
- 4% by colleges.

This could suggest that primary schools are more likely to look at ways of including and supporting children with Down's syndrome perhaps because the more stable environment and curriculum offered in the primary sector supports greater inclusion or because the main driver in the secondary phase is examination results or because of the additional duties placed on schools.

## **Q 10 Oversight and enforcement**

The high priority given to the Equality Act in the new OFSTED framework is positive but the DSA is concerned that 'short' inspections will fail to gather sufficient evidence of good practice in including students who do not fall into the GCSE (A – C bracket).

Although OFSTED inspections provide parents with the opportunity to report on their concerns, the DSA would like to see a specific reference to the duties of a school under the Equality Act in the OFSTED Guide for Parents which clarifies the responsibility the school in this area. This information should provide practical examples to aid understanding.

If parents do have concerns about the inclusion of their child in the life of the school their first port of call has to be the Head Teacher and the Governing Body. Parents find this a difficult route often because personal relationships are involved or because governing bodies are perceived to be biased toward the head in their decision making. Many parents would find it easier to make a direct complaint straight to an independent body like the ombudsman.

The powers of the Tribunal 'lack teeth'; schools cannot be fined or parents awarded compensation. For a parent to take a case to Tribunal takes effort and commitment and can be time consuming. The Tribunal should be able to do more than write a letter.

The DSA would like to see a stronger Tribunal with its powers extended to cover colleges where currently claims for disability discrimination are heard in the county court. This would bring colleges in line within the same framework as schools following the Children and Families Act 2014.

### **Q 11 Non-legislative measures**

The DSA would like to see greater stakeholder engagement by the Equality and Human Rights Commission as discussed by Lord Holmes of Richmond (Disability Commissioner) during his submission of oral evidence to The Select Committee on 21<sup>st</sup> July 2015. This would provide a clearer picture of the issues faced by the general population.

An Equality Act Awareness week/day spearheaded by the Equality and Human Rights Commission in collaboration with the Charity sector would raise awareness of the Act and its relevance to the general public.

Training from the Equality and Human Rights Commission for charities like the DSA would enable them to provide practical information and support, and promote awareness of the Act and its practical application.

Better understanding of specific disabilities would support effective implementation of the Equality Act. Public bodies should make better use of the expertise small charities like the DSA can offer to help them understand how best to include people with disabilities. For example it is not unusual for Employment and Support Allowance assessors to ask someone with Down's syndrome how long they have suffered from the condition or to be ignorant of the medical conditions associated with the syndrome. Most learning disability charities have a website, helpline free resources and training available to address the issue of awareness.

The DSA would like to see the reinstatement of the Disability Equality Duty. It believes the General Equality duty dilutes the impact the current Act has in promoting inclusion for people with disabilities. Disability is different from other protected characteristics as there is a duty to treat people with a disability 'differently'.