

# Evaluating the Impact of the Disability Rights Commission

## Summary Report

This is the summary of a comprehensive report for the Disability Rights Commission, prepared by the Office for Public Management

September 2007

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# Foreword

After seven years the DRC came to an end on 30 September 2007, with our responsibilities and functions then subsumed into the new Commission for Equality and Human Rights (CEHR).

The DRC has achieved much and has much to be proud of. But that is certainly not to say we got everything right, and making choices and deciding priorities of course also have consequences in terms of what the DRC did not do, either at all or to the extent that otherwise might have been possible. We also hope that our experience and lessons to be drawn from it will be of particular interest and use to the CEHR; to the public service more widely; to others with an interest in public bodies, how they work and optimising their impact; and to equality practitioners more generally.

We therefore asked the independent Office for Public Management (OPM) to conduct a thorough evaluation of some key aspects of DRC activity and to identify possible lessons to be drawn.

This report is the result. It is not a DRC document. Rather, it is OPM's report – produced by OPM and it stands in their name. And while the DRC does not necessarily subscribe to all its analyses and conclusions, we do welcome and recommend the report which we hope and believe will prove useful both as a means of helping to assess the impact of the DRC itself and for generating lessons and points for discussion with wider application.

**Bob Niven**  
**Chief Executive, DRC**

**September 2007**

# 1. Introduction

## About the Disability Rights Commission

The Disability Rights Commission (DRC) was an independent body established in April 2000 by Act of Parliament to stop discrimination and promote equality of opportunity for disabled people. The DRC ceased to operate on 30 September 2007, when its functions and powers were transferred by another Act of Parliament to the Commission for Equality and Human Rights (CEHR).

The CEHR also assumed the responsibilities of the Commission for Racial Equality and Equal Opportunities Commission. Its brief covers the equality issues of age, disability, gender, race, religion, belief and sexual orientation.

The DRC operated in England, Scotland and Wales and it set itself the goal of: 'a society where all disabled people can participate fully as equal citizens'. Amongst other things, the DRC:

- gave advice and information to disabled people, employers and service providers
- supported disabled people in using their rights under the Disability Discrimination Acts (DDA) of 1995 and 2005
- helped to resolve problems
- supported legal cases to test the limits of the law
- ran campaigns to change attitudes, behaviour, law and policy
- produced policy statements and research on disability issues

- published information on rights and good practice for disabled people, employers and service providers.

A timeline of key moments in the lifetime of the DRC is given at Appendix 1.

### **The definition of disability**

For the purposes of this report we use the terms 'disability' and 'disabled person' as they are defined in law, by the DDA. The Act sets out the circumstances in which a person is 'disabled' for the purposes of discrimination law.

It says a person is disabled if he or she has a mental or physical impairment that has a substantial long-term adverse effect on his or her ability to carry out normal day-to-day activities.

This includes progressive conditions from the moment the condition has some effect on the ability to carry out such activities, and covers people who have cancer, HIV and multiple sclerosis from the point of diagnosis. The definition of disability was broadened following the amendment to the DDA in 2005.

The DRC has conducted substantial research on the understanding of terms such as 'disabled person' and concluded that many of those with rights under the DDA do not consider themselves to be disabled. We have ensured that this is built into our external communications.

### **About the Office for Public Management**

The Office for Public Management (OPM) is an employee-owned, not-for-profit, independent consultancy that works with organisations across the statutory and third sectors to help them achieve social results. OPM has an extensive track record in conducting high impact evaluations focused on achieving real change and improvement for the organisations and individuals involved.

### About this evaluation

OPM was commissioned in June 2006 to conduct a Great Britain-wide evaluation of the DRC, focusing on the following three areas:

- The impact of the DRC's work to promote and implement rights and duties; to enforce rights and duties, and to influence law and policy.
- The extent to which the processes and structures underpinning implementation of the DRC's activities contributed to or detracted from their effectiveness.
- The likely impact of the DRC's activities on closing the gaps of equality between disabled and non-disabled people (in cases where direct impact cannot be attributed with any great degree of certainty).

In evaluating the DRC's work in these areas, the main intention was to identify what has worked and why in relation to the delivery of DRC activities.

This evaluation was therefore strongly 'formative' – focusing on lessons learned, rather than purely 'summative' – assessing progress made towards objectives.

The ten-year expectations outlined in the DRC's Strategic Plan 2004-07, covered what the DRC termed its 'thematic areas'.

These were:

- education
- employment
- transport, goods and services
- health and independent living.

These 'themes' formed the core of the framework for evaluating the DRC's impact and effectiveness and the majority of this report is structured around an account of impact in each theme.

### **How the evaluation was conducted**

The evaluation was informed by the 'theories of change' (ToC) approach, the pre-eminent theory-based framework for the evaluation of organisations, initiatives and interventions operating in complex environments.

The ToC approach was thought to be particularly suitable for this evaluation because of the complexity and contested nature of the environment in which the DRC operates; the pace of change in the area of disability equality; and the magnitude of many of the Commission's goals and objectives.

The framework for this evaluation was an 'impact model', which described the principal intended outcomes of the DRC's work and how certain key activities and interventions it has undertaken were supposed to influence these.

Specifically, the model identifies the 'outputs' that the activities selected were supposed to achieve, the 'intermediate outcomes' resulting directly from these 'outputs', and the 'strategic outcomes' which were the 'end goals' for the DRC's work. (See Appendix 2 for further explanation of outputs, intermediate outcomes and strategic outcomes).

Activities, outputs, intermediate and strategic outcomes are articulated within the model for each of the four DRC 'themes': education; employment; access to transport, goods and services; and health and independent living. The model also describes the premises, assumptions and hypotheses that link each of the component parts of the sequence – the so-called 'change mechanisms'.

The methodology for the evaluation included both primary research (focus groups and telephone interviews with those with rights under the Disability Discrimination Act and telephone interviews those with duties) and extensive

analysis of secondary evidence, including the findings from OPM's earlier research into the views of the DRC's key opinion formers<sup>1</sup>. In total over 200 people contributed directly to this evaluation and we would like to thank them all for giving their time and expertise so generously.

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1 DRC/OPM (2006) Opinion Former Survey. This was research with senior opinion formers in central government, the broader public sector, the private and voluntary sectors and the media, to assess their views about the DRC and disability equality in general. This research expanded on similar research conducted in 2001 and 2003 by including a large scale quantitative (web-based) survey alongside the in-depth interviews conducted previously. Over 1,000 survey responses were received. The findings were very positive: 77 per cent of respondents said they speak highly of the DRC, and 82 per cent said that the DRC communicates with them in a relevant and appropriate manner.

The DRC was praised particularly for the speed with which it was able to get improvements to disability discrimination legislation, in the form of the Disability Discrimination Act 2005, particularly the disability equality duty. The Commission's written material, notably Codes of Practice, and its website received particularly positive feedback. Criticisms were relatively few, but included a suggestion of possible over-emphasis on the DRC's part of physical impairments, and insufficient attention paid to multiple impairments. Disabled respondents were more likely to be critical and less likely to state that they felt the DRC had achieved its goals.

The full survey is available online.

### **Learning from the evaluation**

This evaluation was very unusual, in that it tried to capture the impact and effectiveness of an equalities organisation with wide-ranging, long-term aims but only a comparatively short time in existence.

The process of conducting the evaluation has generated a good deal of valuable learning. The 'theories of change' approach is generally felt to be a powerful means of conducting an evaluation such as this, allowing for a clear rationale about which activities and outcomes are chosen for evaluation and for an approach to evaluation that is both independent and collaborative.

However, it should be noted that this approach is most effective if the impact model is developed at the beginning of a project, programme or organisation rather than post hoc, as was the case with this evaluation.

Finally, the enthusiasm expressed by the disabled people who took part in this research for face-to-face group discussions is worth noting and taking into account when developing evaluation and research methodologies in the future. Whilst other mechanisms such as surveys and telephone interviews will always have an important function, many participants in this evaluation said how much they valued the opportunity to discuss issues of disability equality in person.

### **Reading this summary**

For each of the four themes (education, employment, transport, goods and services, health and independent living) contained within the DRC's Strategic Plan 2004-07, the evaluation considers progress towards both the 'strategic objectives' and the 'intermediate outcomes' identified.

Each of the 'strategic outcomes' are ambitious, high-level

and long-term, and therefore it is in most cases difficult to attribute any progress made towards achieving them to the DRC's efforts directly or solely. This is why the evaluation framework includes 'intermediate outcomes', which are more specific and shorter-term, and more within the DRC's range of influence. All of these intermediate outcomes, if achieved, will demonstrate progress towards the strategic outcomes.

The thematic approach used in this evaluation allows discussion of the main types of activity carried out by the DRC, which can be summarised as: promoting and implementing legislation; enforcing rights and duties; and influencing law and policy. Some activities, however, are less easily discussed under the thematic structure, and further information about these aspects of the DRC's work are given in boxes inserted throughout this report. These are to give some further detail on aspects of our work, and where they occur in the document is not necessarily relevant.

### **The Disability Equality Duty**

The Disability Discrimination Act 1995 made it unlawful for employers and service providers to discriminate against disabled people. The amendment to the DDA passed in 2005 introduced a new disability equality duty (DED) for public authorities, which extended their obligation to disabled people beyond simply avoiding discrimination.

In particular, public authorities must now have due regard to the need to: promote equality of opportunity between disabled and non-disabled people; eliminate discrimination and harassment; promote positive attitudes towards disabled people; encourage the participation of disabled people in public life; and take

steps to take account of a person's disability, even where that involves treating disabled people more favourably than others.

Since December 2006, almost all public authorities had to have in place a Disability Equality Scheme (DES) which details how they plan to implement the duty.

The findings of the evaluation suggest that the introduction into law and implementation of the DED has been one of the DRC's biggest successes. Disabled people, even if they are not particularly aware of the DRC or the DED, are aware that there has been a significant change in the legal framework as it applies to public bodies, and have seen concrete change as a result. Service providers and employers value the support and advice the DRC provides, and welcome the collaborative approach the DRC takes. Whilst there are criticisms from some sectors about delays in introducing guidance documents, the information provided by the DRC (for example Codes of Practice and on the website) is widely praised. However, with the DED only coming into force in December 2006 – around the time fieldwork for the evaluation began – it is too early to assess the impact of this important change.

## 2. Summary

The DRC was a highly active Commission in its seven years 2000-2007, and achieved a great deal. Throughout, it focused on seeking to ensure that progressive waves of disability rights legislation had real and lasting impact.

Around the middle of its lifetime, the DRC also turned to programmes to close the gaps in participation and positive outcomes between disabled and non-disabled people in key sectors of society. From around the same point, its involvement in the process to establish the new composite Commission for Equality and Human Rights (as well as the objective of influencing the CEHR's priorities) had an increasing effect on DRC planning and its allocation of effort.

Over its seven years the DRC did not take a rigid approach, but kept its eye on what best improves disabled people's lives. In doing so, the Commission of course had to make choices and to prioritise as it judged best. The leading purpose of this evaluation study is to identify the impact and consequences of those choices and priorities.

In the short-medium term, the DRC's approach – working in a collaborative fashion with policy-makers, employers and providers wherever possible, seeking to promote the rights of disabled people rather than promoting itself, and working in coalitions even if that meant its own 'brand' was diluted – has undoubtedly been more effective than a more adversarial one.

The DRC might have directly 'frightened' fewer people than if it had adopted a more adversarial and aggressive approach, meaning that inevitably there are some who do less because they can get away with it. But the balance of advantage is clear.

In 'winning over' more people, the DRC made future progress more self-sustaining: acting in the interests of equality for disabled people is something people want to do because they understand why it is important rather than because they are being forced to comply.

There may also be a different question mark, however, regarding the longer-term. To the extent that self-sustainability comes from disabled people pushing for change themselves, then awareness of a high-profile advocate with power at its fingertips is important. It certainly can be argued that a still more visible DRC would have built still stronger confidence among disabled people.

There is the further question to be addressed of whether the DRC was able to strike the best balance across the broad activity areas of influencing, implementing/promoting and enforcing.

Largely reflecting the staged introduction of legislative provisions since 2000, a sizeable proportion of the Commission's resource was focused on implementation and promotion. The findings of this evaluation suggest that the DRC achieved considerable success in influencing, and that additional resource here would have been unlikely to achieve significant additional outcomes. However part of the price of focusing on joint working, support and awareness-raising among employers and service providers seems to have been a perceived downplaying of enforcement and perhaps, as a result, difficulties for profile-raising and achieving comprehensive impact (this is despite the relatively high number of cases supported by the DRC each year).

The DRC's effectiveness as an organisation operating in the three countries of Great Britain is another issue to be addressed.

The DRC's clear organisational structure, with Directors for Scotland and Wales given full responsibility for the work in

their offices, was very important and allowed the Scottish and Welsh offices appropriate levels of autonomy and flexibility. Mentioned several times in this report are the strong, constructive, collaborative working relationships with the devolved administrations – it was helpful that the DRC was established in the same broad time frame as the devolution process. This is not to imply that all has been plain sailing. For example, greater shared understanding of the importance of differences resulting from devolution would have simplified the launch of some key campaigns.

### **Influencing**

The DRC played a vitally important role in influencing legislation and policy, and is regarded as having pushed the boundaries of legislation through, for example its statutory responsibility for writing statutory Codes of Practice. Furthermore, the recommendations of the DRC's first review of the DDA (Disability Equality: Making it Happen) were an important driver in influencing legislation, with the majority of these recommendations for changes to legislation having now been implemented.

The DRC played a crucial part in establishing a robust and comprehensive GB legislative framework, particularly for employment, access to transport, goods and services and also education. In Scotland and in Wales too there were excellent, influential relationships between DRC staff and key decision-makers in government, reflecting to a great extent the very different policy environments in the devolved administrations.

Stakeholders interviewed as part of this evaluation did however reflect upon the size of the overall task facing the Commission in comparison with its resources, and that this meant that at times it had to become involved on too many fronts to be fully effective. (The onset of the CEHR from 2004 onwards may have had a similar effect on the DRC's

planning.) There are certainly major policy areas where significant work remains to be done. But this is also probably to an extent inevitable: the EOC and CRE were established over 30 years ago (in contrast to seven in the DRC's case), and both those Commissions acknowledge that much remains to be achieved in their own areas of responsibility.

### **Implementing and promoting**

The DRC enjoyed considerable success in the implementation and promotion of rights for disabled people, and examples are described elsewhere in this report. But questions also remain about whether the high level of resources invested in this strand of work have achieved appropriate lasting levels of impact.

Two of the most consistent themes emerging from this evaluation are that those individuals – whether disabled people or those with duties – who have had direct contact with the DRC (through written materials, the Helpline, Website, conferences etc.) give very positive feedback about the DRC; but that the level of widespread awareness of the DRC is not especially high, and impact 'on the ground' is sometimes lacking. Awareness of the DRC and its work among opinion formers is however high.

There is no doubting the Commission's commitment to using the networks of partner organisations to spread the message about the rights of disabled people. But the desire remains among many disabled people for a clearly identifiable national champion – and the answer here may lie with closer partnering with local-level voluntary and community organisations that work with disabled people on a day-to-day basis.

The DRC's programmes of external partnership and transfer of expertise at local level were introduced from 2005 onwards but these, together with the DRC's involvement groups in

connection with its statutory equality duties, had insufficient time to demonstrate a major impact across the country as a whole.

### **Enforcing**

The DRC directly supported legal cases in the courts and tribunals at an average of some 55 per year. This is considerably more than either of the other equality commissions.

The DRC's strategy and legal team were very widely respected by the legal profession (including equalities and disabled advocates specifically) and by others. It is widely recognised that the DRC chose cases well, was very successful in terms of case outcomes and interventions, and clarified (and thus improved) the law. Its Codes of Practice and other guidance on rights, duties and their application also received high praise from the legal profession, although the practical use of all the Codes 'on the ground' is less proven. There have also been particular successes in innovative use of the human rights legislation, with the DRC driving the way in which the law is perceived and used, thereby benefiting partner organisations.

It has been important to recognise that the DRC does not just take legal cases for the benefit solely of the individuals involved in a particular case (though individual case outcomes are important). Where solicitors or legal representatives, for example, look to use the DDA in the best way for individual clients, the DRC has also considered how the DDA can be made to work better and most effectively for disabled people in general. Such an approach underlies the DRC's approach to 'strategic' and/or 'test' legal cases. Furthermore, the DRC has also involved legal policy in discussions on how to pursue specific cases, and the key aspects within them relevant to the disability discrimination legislation, to achieve a more effective DDA.

As noted in this report, many stakeholders (both those with rights and those with duties) feel it is a shame that the DRC did not or was not able to take more high-profile cases to court. There is a perception that more cases may have forced more people into improving practice and in disabled people being given greater confidence in arguing for their rights. But there is a continuing question of low supply of good cases. And in a number of instances, promising cases in terms of profile and legal impact were in the event settled – often generously – out of court between the parties directly concerned (frequently with confidentiality clauses that ruled out publicity).

Nonetheless, that the DRC chose well in the cases it has taken is not questioned, and there are many examples of good integrated legal and media work to publicise the messages of such cases. Widely acknowledged and praised landmark DRC cases include *Jones v 3M Healthcare Ltd*; *Collins v Royal National Theatre Board Ltd*; *Archibald v Fife Council*; and *Nottinghamshire County Council v Meikle*.

The DRC established around a dozen voluntary binding ('Section 5') agreements with companies as well as education and other service providers.

And there have been some useful lasting gains from its general Formal Investigations (FI) into Website Accessibility (including a new BSI standard) and primary health care for people with learning disabilities and mental health service users.

Its final investigation, on regulations governing standards of health for professions in certain key occupations, also seems set to be widely welcomed and influential. FIs are resource-hungry exercises but there is considerable consensus that they, and to an extent Section 5 agreements as a substitute for legally binding named-part FIs, were underused by the DRC. These legal powers allow more in-depth and

comprehensive coverage of issues and discrimination than individual legal cases, as well as having the potential for significant long-lasting impact. They were, however, only first used in the last few years of the DRC's life.

### **Some significant DRC legal cases**

#### ***Jones v 3M Healthcare Ltd and three others* 2003 IRLR 484 House of Lords**

These cases established that post-employment termination discrimination was covered by the DDA's employment provisions. The cases were heard with similar cases concerning the operation of the Sex Discrimination Act and the Race Relations Act. This was the first time the House of Lords had considered the DDA.

#### ***Paul v National Probation Service* 2004 IRLR 190 Employment Appeal Tribunal**

This case established that the duty to make reasonable adjustments can extend to giving thought to making adjustments to a job to overcome difficulties identified by an adverse occupational health assessment.

#### ***Collins v Royal National Theatre Board Ltd* 2004 IRLR 395 Court of Appeal**

This case established that the possibility of justifying a failure to make reasonable adjustments is very restricted. It therefore moderated the impact of an earlier, much criticised, Court of Appeal decision concerning justification of less favourable treatment (*Jones v Post Office* 2001 IRLR 384). It also foreshadowed the changes to the employment provisions of the DDA on 1 October 2004, which removed the provision allowing justification of failure to make reasonable adjustments.

### ***Law v PACE Microtechnology Ltd Court of Appeal***

This case was on the same point as Collins, and was conceded by the respondent in the Court of Appeal, because of the outcome of Collins. The respondent was refused permission to appeal to the House of Lords.

### ***Archibald v Fife Council 2004 IRLR 651 House of Lords***

This was the first case where the House of Lords had to consider the operation of the DDA, as compared to other anti-discrimination legislation. In a key judgment which was very widely reported, and will be in use by courts and tribunals for years to come, the House of Lords unanimously allowed Mrs Archibald's appeal, which was backed by the DRC. The House of Lords judgment contains some very important principles. The House of Lords stressed that the DDA is different to the Race Relations Act and the Sex Discrimination Act, and may require a difference in treatment to attain equality of outcome. The reasonable adjustments provisions are the mechanism for achieving this. The judgment made it clear that the reasonable adjustments provisions are very broad in scope. They cover the situation where a person becomes incapable, through disability, of carrying out his or her job. Employers may have to make adjustments to their usual policies (such as a redeployment policy requiring competitive interviews). The 'merit principle' which applies to local government appointments is subject to the DDA's reasonable adjustments duties. The House of Lords also said that the question of justification of less favourable treatment cannot be determined until a determination has been made about reasonable adjustments. This was an important finding, and built on the decision on Collins, thus further limiting the scope of Jones v Post Office.

### ***Nottinghamshire County Council v Meikle* 2004 IRLR 703 Court of Appeal**

This case further developed the principles established in Archibald. The Court of Appeal's judgment makes very clear the importance of the reasonable adjustments provisions in relation to the question of justification of less favourable treatment. This case established that constructive dismissal is covered by the DDA's discrimination provisions, and that the payment of sick pay is subject to the reasonable adjustment provisions. On the facts of the case, which were that Mrs Meikle would not have been off sick if reasonable adjustments had been made by her employer, the Court of Appeal held that reduction of sick pay in line with the respondent's sick pay policy was both a failure to make a reasonable adjustment and unjustifiable less favourable treatment.

## 3. Education

### Summary

The DRC has made an important contribution to raising awareness about the inequalities and barriers faced by disabled people in education. The extent to which it has been successful in starting to bring down those barriers is less obvious from current evidence.

The evidence illustrates that there have been successes in relation to each of the intermediate outcomes (see below), with policy makers influenced by the DRC's research, the law used and clarified, and information, advice and support contributing to increased awareness of the law (both for those with duties and those with rights).

It also illustrates, however, that the experiences 'on the ground' are highly variable, and that for many disabled learners and their parents, improvements are rarely felt, understanding of rights and how to secure them often limited, and awareness of the DRC as a resource for advice and information incomplete.

Evidence about the impact of the DRC's Educating for Equality campaign, for example, suggests that the DRC has played an important role in raising awareness about disability equality in education legislation.

However, this field, even more so than the other theme areas, can be viewed as a crowded marketplace, with a number of other organisations working on the ground and at a national policy level to improve education outcomes for disabled people. Unpicking the DRC's specific role within this is difficult, and firmly establishing the magnitude of change attributable to the work of the DRC near impossible.

### Strategic outcomes

Two of the three strategic education objectives below were set out in the DRC's Strategic Plan 2004-07. These were long term aims to be realised by 2010, so the DRC would not expect to have achieved them by 2007. Nevertheless, progress has been made.

#### **1. Reduce the attainment gap between disabled and non-disabled people**

The evidence collected as part of this evaluation suggests that there has been a narrowing of the attainment gap between disabled and non-disabled young people in education during the lifetime of the DRC. It is difficult to discern how much of this change can be attributed to the DRC.

There remains a stark disparity between the qualifications acquired by disabled and non-disabled students. Figures from the Labour Force Survey 2005 demonstrate that disabled people between the ages of 16 and 24 are almost twice as likely to have no qualifications as their non-disabled peers (23 per cent compared to 13 per cent). Further to this, at age 16, young disabled people are still almost twice as likely not to be in any form of education, employment or training as their non-disabled peers – 15 per cent compared to 7 per cent. The most recent figures available from the Higher Education Statistics Agency show that the proportion of disabled students on UK higher education programmes remains very low – just 5.9 per cent of students were known to be disabled in 2004-05.

#### **2. Reduce the number of disabled students excluded from the school of their choice or from school activities on the grounds of disability**

Evidence collected as part of this evaluation indicates that, in a minority of cases, disabled children are unable to

get access to all school resources, and find themselves excluded from certain activities. Of those surveyed in research undertaken by DRC in 2003, 11 per cent had been unable to get access to all school resources, and many also said they had missed out on school sports or trips.

Recent research suggests that the great majority of disabled children are at the schools of their parents' choice but the figure is lower than for non-disabled parents, reflecting that the exercise of choice remains limited for disabled children and their families. There is no earlier data available against which to benchmark this evidence, so change over time in the reduction of exclusions cannot be firmly established. There are, however, positive indicators at the intermediary level.

### **3. Raising the expectations of disabled learners in post-16 education**

Evidence collected as part of this evaluation shows that the expectations of disabled young people diverge significantly from those of non-disabled young people after 16. A survey by the DRC in 2003 found evidence of exclusion and subsequent low expectations, with almost one-third of respondents saying that they expected to earn less than their peers by the time they were aged 30. Whilst this evaluation has identified a greater assertiveness amongst learners and their parents there is not, as yet, quantifiable evidence of raised expectations.

## **Intermediate outcomes**

### **A. Embedding education rights for disabled people in legislation, processes and guidance**

The evidence collected as part of this evaluation suggests that the DRC has been successful in making its voice heard amongst decision makers with regard to the need for strengthened education legislation and better collection of data to support future policy decisions.

Examples include the provision of evidence to the Education and Skills Select Committee's Inquiry into Special Education Needs and collaboration with the (then) Department for Education and Skills and the Learning and Skills Council (LSC) on proposals.

Similarly, the DRC made a successful contribution to the Foster Review of further education colleges, which resulted in specific recommendations in the Further Education White Paper regarding the LSC's development of a national strategy for delivering further education to disabled learners.

In the devolved contexts of Scotland and Wales, DRC staff have had particular success in winning the support and cooperation of decision makers.

DRC Scotland provided evidence during the passage of the Additional Support for Learning (Scotland) Bill, leading to changes in the 2004 Act and working with the Scottish Executive on widening the additional support tribunal hearings to hear Disability Discrimination Act (DDA) schools cases.

DRC Wales organised an international congress for young disabled people which was followed by a two-year investigation by the Welsh Assembly Government's Equality of Opportunity committee.

### **B. Raising students' and parents' awareness of and ability to fulfil their rights**

Evidence collected as part of this evaluation suggests that the general public's awareness of the new education law increasing during the period of the DRC's biggest education-focused campaign, Educating for Equality, in 2003. A causal link between the DRC's work and the increase in awareness cannot be established beyond question but is highly probable.

More specifically, parents of children covered by the DDA are now more aware that the law exists, although not all of them are aware that it applies to education and how, if at all, it has benefited their child. Whilst some parents had high awareness of the information and resources available to them from the DRC, it appears that many were more likely to go to their local authority or local voluntary organisations for advice.

Successful dissemination of its guidance materials to these ground-level support networks and information providers means that the DRC has been more effective than parents and disabled people sometimes give them credit for, but there is a consensus that a higher profile for the Commission would have given disabled students and their parents and carers more confidence to pursue their legal entitlements with regard to education.

### **C. Encouraging education providers, teachers, etc. to work proactively to meet the needs of disabled students**

The evidence collected as part of this evaluation suggests that education providers' awareness of the duty placed upon them by the DDA is increasing. For example, the Educating for Equality objective to raise awareness of the DDA Part 4 amongst education providers 'had been largely met' and this had happened at 'several levels'.

However, whilst it seems that progress has been made in most institutions on admissions, examinations, assessment and student support, teaching and learning remains an area requiring significant change. Some evidence sources illustrate that whilst universities, for instance, are increasingly committed to identifying the needs of disabled students, this is often not matched by the necessary proactive willingness to adapt teaching and assessment practice.

The limited evidence drawn on as part of this evaluation

points towards education institutions being confident about their duties under the DDA and believing that their policies and practices have seen significant improvement with regard to disabled students in recent years.

On the one hand, their references to DRC Codes of Practice, the website and e-bulletins suggest the importance of the DRC in informing these professional institutions directly. For example, research following the Educating for Equality campaign found that the majority of further and higher education respondents to DRC-commissioned surveys either had their own copy of the Code of Practice or knew where they could look at one. Furthermore, 56 per cent of schools sampled in the same research stated that they had used the Code of Practice.

On the other hand, however, when information and advice is sought, there is often reliance by educational organisations on their own professional networks and organisations rather than the DRC. Those with responsibility for disability equality in post-16 education sometimes get their information direct from the DRC via e-bulletins and visits to the website, but also through other organisations and their own professional networks.

The DRC has looked to work through networks and partnership arrangements – working, for example, with the Teacher Training Agency and the General Teaching Councils to produce guidance on teacher training. The evaluation has found mixed feelings regarding how effective the DRC had been in building relationships with education intermediaries. Those organisations involved in collaborative activities were positive about the approach; those ‘on the ground’, however, had little awareness of the DRC’s partnership work.

### **D. Using the law to bring about changes to institutional practice**

The DRC has supported some high-profile legal cases on the education duty of the DDA, testing and clarifying the law and making education providers realise the importance of fulfilling their duties. The DRC's website lists 56 Part 4 (education) legal cases that the DRC has supported, the majority of which related to less favourable treatment and reasonable adjustments in schools.

Those cases have, however, been less numerous than in other fields of the DRC's enforcement work, and the resulting media coverage of education cases has been relatively low. The evaluation fieldwork suggests, however, that higher education professionals, for example, do respond to education-related cases in the media. Evidence suggests that the wider tendency for settlements to be reached out of court has frustrated the DRC's efforts to bring more landmark education cases.

The evidence collected as part of this evaluation also indicates that through voluntary binding agreements in the higher education sector, the DRC has used another means of legal enforcement to build more thorough, lasting change in an atmosphere of trust and support rather than through the 'one-off confrontation' of court. For example, the first agreement with a higher education institution committed the university to improve the accessibility of its teaching, learning and assessment materials to students and to produce a disability strategy to improve its policies, practices and procedures.

However, voluntary binding agreements were only employed late on in the DRC's life. The evaluation fieldwork suggests there is some confusion and lack of awareness about the nature and purpose of the voluntary binding agreements beyond those directly involved,

which may act to limit the sector-wide impact of these agreements.

### **Influencing public policy and debate**

The DRC undertook a wide range of activities across Great Britain with a view to influencing public policy and debate. This included regular briefings for parliamentarians, joint projects with think tanks and academics; and placing influential pieces in news and comment sections of newspapers.

In its early years, the Commission's focus was on influencing disability discrimination legislation. Increasingly from 2003 onwards it tried to ensure that decision makers saw disability as an urgent public policy issue with wider resonance for families, the economy and society, with the aim of putting disability equality 'at the heart of public policy'. The culmination of this approach was the DRC's Disability Agenda, published in February 2007 and setting out how disability equality could contribute to major public policy objectives such as tackling child poverty, unemployment and the social care crisis.

There were particular opportunities with the devolved governments in Scotland and Wales. DRC stakeholders interviewed for the evaluation emphasised that it was not so much that the approach was very different from London, but that the 'terrain' differed so markedly. Two things in particular stand out: one is the smaller size of the policy environment, which allowed Commission staff in Scotland and Wales to build up closer relationships with civil servants and politicians; and the other was the relative embryonic state of the devolved administrations, which gave the Commission a great deal of leverage in

terms of offering expertise to decision makers. This meant that concrete policy achievements were perhaps more numerous in Scotland and Wales than in England.

The DRC conducted regular monitoring of media coverage on disability. Over the lifetime of the DRC, and in line with its media strategy, coverage decreased in local and regional print media but increased in local and national broadcast and in national print media – resulting overall in fewer ‘opportunities to see or hear’ against some indices but a greater proportion of coverage in opinion-setting national news and comment pieces. This shift in emphasis mirrored the shift in DRC strategy away from simply publicising changes to the DDA and towards influencing the nature and quality of debate on disability issues in Britain.

## 4. Employment

### Summary

The DRC's activity on the four employment intermediate outcomes considered as part of the evaluation has been to make progress towards achieving the strategic outcomes of reducing the employment and income gaps facing disabled people and on reducing barriers to career progression.

The DRC has succeeded in its objective of influencing the law around employment but has not enjoyed as much success as it might around maximising the 'fear factor' potential of the law. Support to employers has been of a high quality but perhaps necessarily limited by resources in terms of reach. There is a lack of evidence about the impact of the DRC's work to raise awareness amongst disabled people of their employment rights.

This mixed picture of progress towards intermediate outcomes is, perhaps, one way of explaining the mixed picture of progress towards strategic employment outcomes.

As with its work under the other themes, the DRC has quickly established itself as a centre for expertise and a source of valuable information regarding employment. However, as with its other work programmes, the Commission faces a mismatch between the experiences of disabled people and those with duties who have had direct experience of DRC advice or guidance, and those who have not.

The data regarding awareness and attitudes of employers is robust and suggests significant improvement since 2003, albeit with a continuing level of superficiality and narrow-mindedness. Given its excellent partnership arrangements with sectoral and trade bodies, it is doubtful whether the DRC could have done much more on the very significant challenge of attitude change within the resources it had at its disposal.

There is little recent data on the employment experiences of disabled people, and therefore it is difficult to come to substantive conclusions about the impact of the DRC's work on this. However, the Commission's contribution to improving the terms of the DDA is widely credited. The DRC's approach to enforcing employment law is also applauded by the legal profession but challenges around publicising the results of test cases mean that this perception is not shared by disabled people, and that the impact on wider sectors has not been as significant as intended.

### **Strategic outcomes**

Two of the three strategic objectives below were set out in the DRC's Strategic Plan 2004-07. These were long term aims to be realised by 2010, so the DRC would not expect to have achieved them by 2007.

#### **1. Reduce the employment gap between disabled and non-disabled people**

The evidence collected as part of this evaluation suggests that the employment rate for disabled people has gradually increased since the DRC was established in 2000.

In 2000, the employment rate of disabled people was 46.6 per cent; by 2005, this had risen to 50.1 per cent. Furthermore, the gap between the overall employment rate for people of working age and the employment rate of disabled people has also decreased. In 2000, the gap was 34.2 percentage points but had narrowed to 30.4 percentage points by 2005.

Whilst this improvement is true across people with every type of disability, employment rates for people with, for example, learning disabilities and mental health conditions remain much lower than the average. The evaluation fieldwork corroborates this finding, with

disabled people participating in the research highlighting that levels of confidence with regard to employment have not increased at the same rate amongst different groups, and that there has been very little or even no improvement in employment and the prospects of employment for people with learning disabilities or mental health conditions.

### **2. Reduce the gap in earned income levels between disabled and non-disabled people**

Since 1999, the gap between the average gross hourly pay earned by disabled people and that earned by non-disabled people has fluctuated, showing an initial reduction until 2003, since when it has gradually increased again. In 2005, the average gross hourly pay of disabled employees was about 10 per cent less than that of non-disabled employees: £9.88 per hour compared to £10.85 per hour. Evidence also shows that working-age adults living in families with at least one disabled adult or child are more likely to live in a low-income household.

### **3. Dismantle the barriers that disabled people face to career progression and leadership positions**

The available evidence strongly suggests that disabled people still face significant barriers to progressing in their careers and gaining leadership positions. Employment data shows that in 2005 disabled people were more likely to work in manual and lower-skilled occupations and less likely to work in managerial and professional occupations.

There are also significant differences in the employment rates of disabled people and non-disabled people with the same qualifications. For example, whilst 78.8 per cent of non-disabled people with GCSEs at grade A\*–C or equivalent as their highest qualification were in employment, only 55.8 per cent of disabled people with

the same highest qualification were in employment. There is a mixed picture regarding improvements over time regarding this.

There remains a disparity in leadership positions. Currently, 2.8 per cent of the Senior Civil Service, for example, are disabled people, compared to 4.5 per cent of all Civil Service staff. Longer-term trends do show an increase in the number of disabled people in leadership roles (up from 1.5 per cent in 1998) – with the government working to a target of 3.2 per cent by 2008 – but there nevertheless remain discrepancies between the numbers of disabled people and non-disabled people in positions of leadership.

### **Intermediate outcomes**

#### **A. Influencing the legal framework for challenging discrimination with regard to employment**

There was a strong consensus amongst the disabled people who took part in research for the evaluation that, in the words of one individual: 'The main thing the DRC has done is push forward legislation.' As a result there is: 'Much more awareness of employment rights, especially amongst younger generations.'

Similarly, respondents to the 2006 survey of opinion formers cited legislative drivers – and the DDA and Disability Equality Duty in particular – as the principal reasons why their organisations were now prioritising disability equality to a greater extent than before in their approach to employment. Employers also credit the DRC with influencing the legal framework for challenging discrimination with regard to employment. The impact of this legislation is less clear – as explored below.

A further success that will help benefit disabled people is the acceptance of DRC-supported amendments to the bill

that became the Welfare Reform Act (2006). From October 2008, when the new Employment and Support Allowance is introduced, everyone receiving income support on the grounds of incapacity will be able to earn up to £86 per week, providing an opportunity for disabled people to take on voluntary or part-time work without the threat of losing part of their income.

### **B. Raising awareness amongst employers of their duties under the DDA**

Implementing and promoting rights and duties has been a key area of activity for the DRC. Evidence collected as part of this evaluation suggests that employers' awareness of their duties under the DDA has improved. In 2006, research by the Department for Work and Pensions found that 80 per cent of respondent organisations across Great Britain were aware of the employment provisions of the DDA, compared to 63 per cent of organisations in 2003.

Despite improvements, there remains differing attitudes from employers on employing people with different impairments. For example, 70 per cent of employers felt that it would be easy to employ someone with dyslexia, compared to less than half who thought it would be easy to employ someone who has a learning disability.

DRC advice and guidance materials for employers have been very well-received. For example, there was very positive feedback on Codes of Practice, the Helpline and a short film created by the DRC – called 'The Appointment'.

There is doubt, however, about the extent to which the messages contained within the DRC's advice and guidance have filtered through to a sufficient number of employers in a meaningful way and therefore whether they have achieved widespread change in attitudes, let alone changes in practice. Whilst basic awareness of

legislative duties may have improved, secondary data and the primary research conducted as part of this evaluation reveals the amount that still needs to be done, particularly to continue to cascade the messages about employing disabled people to a wider range of smaller employers, and to ensure that even when large employers have officially committed to implementing the DDA, this translates into practice 'on the ground'.

Within public bodies, research by the Department for Work and Pensions suggests that the vast majority of employers have adapted the work environment and implemented flexible working policies to help disabled employees. This evaluation, however, reveals evidence of low involvement of disabled people in developing policies and better practice in larger as opposed to smaller organisations.

Positive and collaborative relationships with employer federations – in England, Scotland and Wales – clearly exist. For example, DRC Scotland has established a strong joint working relationship with the Scottish Retail Consortium and Federation of Small Businesses. The concrete impact of such relationships, however, is difficult to demonstrate.

### **C. Raising awareness amongst disabled people of their rights and providing support in fulfilling them**

The DRC focused activities on raising awareness of rights among particular groups of disabled people less likely to know about the DDA or to know that it applied to them, such as people with HIV, cancer, mental health conditions, learning disabilities and other long-term health conditions. This included marketing to older people and those who did not describe themselves as disabled through chemists.

There is a lack of recent survey evidence relating to the employment experiences of disabled people. The findings from the evaluation fieldwork were generally positive: the DRC website and Helpline, important sources of advice and support for disabled people on employment, were very widely praised where an individual had direct experience, but there is some doubt from the findings of the new research conducted as part of the evaluation whether awareness of them (or in fact the DRC in general) is very widespread at all.

### **D. Using the law to bring about fair treatment of disabled employees**

The DRC is very highly regarded in the legal profession in the area of employment law, and there is strong support amongst those engaged in the field of disability discrimination law for its decision to fund only employment test cases, and to move away from funding routine cases where the legal point has already been proved.

The DRC website lists 159 employment-related court actions funded by the DRC since 2000. The DRC Helpline has helped bring potential cases to the legal team's attention; an evaluation of the DRC's Helpline in 2005 noted that around a third of all individual callers had been calling to request help with a case.

There is less appreciation of the necessity of the decision to fund test cases amongst disabled people. In the view of the vast majority of disabled people who took part in focus groups or interviews as part of this evaluation, there was felt to be insufficient enforcement of the duties of employers towards disabled people.

For the impact of enforcement to be most beneficial, the DRC has always worked to disseminate news of its legal activities, and there has been an effective synergy

between the work of the legal team and the media outputs based on their work. It is often the case, however, that cases are settled by employers out of court. Although this brings quicker and easier resolution for individuals, it does mean that the prospect of media coverage (and thus wider influence on a sector) is removed.

The DRC's formal investigation power was felt by legal professionals, both within and external to the DRC, to have been underused. In September 2007, the DRC published the report of a general formal investigation into the impact on disabled people of regulated health standards in certain professions. However, the timing meant that this investigation was outside the scope of the evaluation and little-known outside the DRC.

Where the DRC has undertaken formal investigations they have been 'general' rather than 'named party', ie investigations into an area of concern or a sector (such as health inequalities or web accessibility) rather than an individual organisation.

Attributing change in the area of enforcement is challenging. Without the DRC a smaller number of legal cases would have been taken against employers, but this is not to say that the DRC has been alone in using the DDA: law centres, Citizens Advice, unions and commercial solicitors were already using the DDA when the DRC came into being. Nonetheless, the capacity-building work the DRC has done with organisations such as trade unions and advice bureaux has increased the number of people confident and qualified to identify and take forward DDA-related cases.

Employers' fear of the law has been strengthened by the cases that have been brought and won – were the law not to have been seen in action, those fears would have diminished as time passed. The existence of the DDA is

central in driving employers to improve practice. On the one hand, this evaluation has found that it would always be the legal position of an employer that would most motivate them to observe their duties under the DDA. On the other hand, it was also suggested that larger organisations had moved beyond legal concerns and were improving practice for reasons such as being an 'employer of choice'.

The findings of this evaluation suggest that the DRC's approach to employment enforcement cases has been successful within the constrained resources at its disposal.

### **Strategic legal powers**

As well as making careful choices about which DDA cases to support, the DRC also made use of a number of its unique legal powers.

### **Voluntary binding agreements**

These agreements existed under a power given to the DRC under Section 5 of the Disability Rights Commission Act 1999, and committed organisations to:

- Tackle disability discrimination which the DRC had reason to believe had been or was being committed.
- Improve their services in a specific area or areas (eg application and admissions procedures in a university) by taking such action as agreed.

In return, the DRC agreed not to engage in enforcement action such as a named-party formal investigation (FI) in relation to the unlawful act in question. The DRC also provided a lead officer to work in partnership with the other party and to support them to achieve the aims of the agreement.

Most agreements arose out of legal action by the DRC, often as part of a settlement between the parties. However, the DRC also entered into agreements as a result of reports from external legal sources and as a result of 'mystery shopping' information-gathering exercises carried out by the DRC.

The Commission usually entered into voluntary binding agreements with other parties which they believed were willing to use their learning to influence best practice in the sector in which they operated. Once an agreement had been entered into, the DRC had the power to enforce the agreement through the courts if necessary. The CEHR has similar powers.

### **Formal investigations**

The DRC had a range of statutory powers to back up its duties to eliminate discrimination, promote equal opportunities and to encourage good practice, and this included the power to conduct formal investigations.

The Commission was able to carry out an investigation into any area relevant to the participation of disabled people in society. Certain aspects of formal investigations are prescribed by statute (for example the DRC had to publish an investigation's terms of reference at the outset) but the actual content and process of an investigation varies according to the subject matter.

Typically though, formal investigations involve an in-depth review of relevant policy and practice at a national level, detailed research, and consultation both with the sector or organisation under investigation and disabled people themselves. At the end of an investigation, the DRC set out its conclusions and made recommendations for changes to policy or practice, or even to the law itself.

## 5. Transport, Goods and Services

### Summary

Overall, the evidence suggests that the DRC has made enough ground on each of its intermediate outcomes to be able to say that it is on course to reach its long-term strategic objectives with regard to transport, goods and services.

The legislation has been extended and strengthened, and the law has been exercised tactically for maximum effect, albeit too infrequently to have been the driver that many think it ought to have been. Implementation and promotion methods can claim to have had the highest visibility, as might be expected, and it seems likely that its impact has been widespread, if not always sustained.

In this sector of its work as in others, there are many disabled people who would have liked the DRC to be a more visible, hard-hitting champion, and there are times when a more hard-line approach might have pushed the agenda forward and 'got things done'. Nevertheless, its success in winning the respect and even support of business, its success at selecting and working with partners and its resulting image as conciliatory rather than adversarial agent of change has justified its position and outweighed any shortcomings.

### Strategic outcomes

Two of the three strategic objectives below were set out in the DRC's Strategic Plan 2004-07. These were long-term aims to be realised by 2010, so the DRC would not expect to have achieved them by 2007. Nevertheless, progress has been made.

### **1. Improve disabled people's levels of confidence in using public transport**

Evidence collected as part of this evaluation suggests that disabled people's confidence in using public transport is significantly lower than that of non-disabled people – indeed, disabled people are four times more likely to lack confidence in using buses and trains than non-disabled people (26 per cent compared to 6 per cent). Lack of comparable data for previous years on the specific question of confidence means it is not possible to track change over time, however.

There is evidence that the physical accessibility of public transport (and buses in particular in some parts of the country) has improved during the lifetime of the DRC, which is likely to have helped to improve levels of confidence. For example, over 4,400 compliant rail vehicles had been introduced into service by 2005 and 46 per cent of the bus fleet was accessible. It is also evident, however, that transport accessibility varies considerably between both regions and cities and other areas.

### **2. Improve access to the built environment, including houses**

There is a lack of recent survey evidence regarding disabled people's experience of the accessibility of the built environment. One 2002 survey found that one in five disabled people said they had experienced difficulties in accessing goods and service.

The evaluation fieldwork suggests that the situation has improved since the last major national survey was conducted, although improvements have not been consistently felt. Evidence collected as part of this evaluation from service providers suggests that physical access to buildings is improving, and more public and private sector providers – some 61 per cent – have made or are planning to make improvements to their properties.

### **3. Improve access to services, including housing services**

Accessibility of services varies depending on the service and the locality in question. In 2001, 46 per cent of disabled adults reported having difficulties accessing goods, services and facilities.

In common with issues around access to the built environment, the focus with regard to services has tended to be on improving physical access (for disabled people and service providers). After access, the attitudes of staff and other customers have been cited by disabled people as important determinants. These are less easily traced, but recent evidence points towards service providers taking more action on this element of access (such as through training). For example, in 2006, some 47 per cent had made or planned changes to staff training on disability issues and awareness, compared to 25 per cent 3 years earlier.

### **Intermediate outcomes**

#### **A. Influencing the legal framework for challenging discrimination with regard to accessibility**

The evidence collected as part of this evaluation suggests that the DRC has been successful in its efforts to strengthen the DDA in relation to transport, goods and services accessibility.

In England, for example, the DRC worked with the (former) Office for the Deputy Prime Minister in developing Part M of the Building Regulations, which extends consideration to usage and enjoyment and not just (physical) accessibility.

In Scotland and Wales, Built Environment Groups have both undertaken important work regarding accessibility, including in Scotland an amendment to the Building Act

to enable the development of regulations on the usage and suitability of buildings by disabled people.

Since the DDA first came into force, amendments have extended its reach to remove the exemption on transport. The extent to which these changes have been brought about by the DRC's efforts is unclear, but the high regard in which DRC research is held – providing data, for example, in relation to transport and housing – and the respect its voice appears to command amongst decision-makers would suggest that the DRC is at least in part responsible.

### **B. Raising awareness amongst service providers about access**

The evidence collected as part of this evaluation shows that service providers are generally more aware of their duties under the DDA than they were in the past. The DRC's Open 4 All campaign was followed by a tangible increase in awareness of the DDA by those with duties, and more recent evidence suggests there has been increased willingness to make adjustments to services and premises.

Whilst a causal link cannot be proved, the profile, reach and positive response to the DRC's promotional work makes this link plausible at least. Furthermore, securing the buy-in of the Confederation of British Industry and the British Retail Consortium to the Open 4 All campaign was noted as important.

The criticism that the DRC has done too little to challenge the perception that access is solely about addressing physical barriers has weight, but must be balanced by the view of some that these are the most immediate and insurmountable obstacles for disabled people. The mostly positive perceptions of the DRC as supportive of business, rather than awkward and adversarial, point

towards its approach to business as having been the right one.

The work of the DRC has been well-received by service providers, with the Helpline and the website regarded as valuable resources. However, some lack of clarity was identified around the type of support the DRC could offer.

### **C. Raising awareness amongst disabled people and supporting them to achieve better access**

Evidence suggests that the Open 4 All campaign was less successful in reaching disabled people, and that more broadly it has been a challenge for the DRC to get its message on this theme out to the full range of people covered by the DDA. Overall, the evaluation has collected little robust evidence as to whether disabled people are more equipped and willing to argue for their access rights than in previous years, nor of the extent to which the DRC is responsible for any change that has occurred.

What is evident is that DRC events and materials, when accessed by disabled people, are usually positively received, and the Helpline and website have been well used and popular mediums for disseminating information and sourcing the appropriate advice and support. Developing the use of videophone technology and an online messaging service have both helped to improve the service provided by the Helpline.

Work with intermediaries, moreover, has ensured that the DRC has established itself as a key source of information for other organisations working directly with disabled people, even if not always the first point of call for disabled people themselves.

For example, DRC Wales has undertaken detailed training on the DDA for all Citizens Advice advisors in Wales and has set up local centres of disability discrimination

expertise, to provide the skills and expertise needed to deal with DDA enquiries. However, with so many disabled people living outside these formal networks and groups, there remain large numbers with rights under the DDA who are in no stronger a position to argue for better access than ten years ago. Nonetheless, it is difficult to imagine what more the DRC could have done on this with the resources available.

### **D. Using the law to bring about improved access**

In supporting successful legal cases in relation to transport, goods and services, the DRC has been responsible for forcing individual organisations to improve their practice. These include Debenhams and Central Trains, both of which were involved in high profile cases.

The evidence also suggests that through media dissemination of these cases, many more organisations have been reminded of the threat of legal action and spurred on to ensure they too are compliant with the law.

The fieldwork for this evaluation revealed, however, that there is a widely held belief, that there have been insufficient high-profile cases, and that service providers have thus not been shaken into making the progress that they should have. This is a point argued not only by disabled people but by businesses and public sector service providers themselves.

It seems reasonable to assume that a greater number of 'big' legal cases would also have helped to clarify the law to the many organisations (particularly the smaller ones) who remain uncertain of their duties.

Notwithstanding the context of taking Part 3 cases – including the difficulties associated in navigating the County or Sheriff Court processes – consideration of the

DRC's limited resources suggests it must have been right for the DRC to establish that it would be selective and pursue only cases of wider strategic importance, even though this inevitably disappointed many disabled people. Having made that decision, however, the challenges involved in finding enough such test cases to support, meant that impact was reduced.

Voluntary binding agreements have also been a means by which the DRC sought to embed change in a sector. On the whole, these agreements were well-received by organisations that have entered into them. Although it is too early to evaluate whether contact with a sector makes an impact beyond the individual organisation involved, the potential significance of having an advocate in a particular sector makes long-term impact seem at least plausible.

### **The DRC and Human Rights**

The evaluation demonstrated that stakeholders felt that the DRC had been successful in expanding on and clarifying what human rights mean in legal terms and in effective use of the Human Rights Act. This has been evident particularly in relation to issues of health and social care. Respondents spoke of a misconception that human rights legislation is designed only for certain groups but that the DRC had demonstrated that it is potentially for anyone in society.

The DRC sought to expose and promote the close inter-relationship between fundamental human rights and disability rights, and has been keen to explore the way in which an embedded 'human rights culture' could benefit disabled people.

This inter-connectivity has been founded on the common ground between disability equality and human rights, most notably the principles of autonomy and dignity. This philosophy has the potential to be an important one for disabled people, as it emphasises each person's right to fulfil his/her potential.

The great achievement of the DRC in relation to human rights has been its ability to apply and make tangible a law that for many remains abstract and which, worse still, often receives a negative press.

Amongst the most reported of several cases taken by the DRC on human rights grounds was that of two disabled women whose local authority carers wanted to use manual hoists rather than physically lift them in and out of the bath, which they found distressing.

The disabled women's right to 'independent living', to dignity, choice and control, had in effect been placed second to the care workers' health and safety. The DRC argued that the authority had got the balance wrong, and in his ruling the judge incorporated human rights principles into social care policies. 'Human dignity,' the judge said, was central to the 'physical and psychological integrity' of the person.

In threading together the debate about disability with the debate about human rights – particularly in relation to independent living – the DRC has not only benefited those covered by the DDA. Some experts suggest that the DRC has been so effective in this field that its impact is being felt by other interest groups, awakening them to the potential of the human rights legislation and encouraging them to exploit its value.

'To my knowledge, the DRC has demonstrated a

strong sense of using the Human Rights Act as a means to an end and not end in itself ... it has contributed to a national discussion, and has made public bodies think about what the Human Rights Act means' – human rights lawyer.

As well as being involved in other human rights interventions involving disabled people, the DRC has also published discussion papers and consultation responses on a number of key human rights issues including genetics and voluntary euthanasia.

## 6. Health and Independent Living

### Summary

The evidence collected as part of this evaluation suggests definite progress made by the DRC on health and independent living issues, albeit in the context of an exceedingly broad range of issues and challenges. Disabled people are yet to see a substantive improvement in the quality of healthcare, access to services or the extent to which they are enabled to live independently. However, the DRC has laid foundations for improvement in the future.

The DRC has enjoyed considerable success, as elsewhere, in working collaboratively to provide support and guidance to professionals and managers in the health sector. Information is also regarded very highly by disabled people, again as elsewhere.

The Commission has enjoyed some success in influencing high-level policy. Early indicators are that the formal investigation into health inequalities has been taken seriously by Government and the broad independent living coalition brought into being by the DRC is making it harder than ever for policy makers to avoid legislative change. Concrete outcomes have also been achieved in Scotland and Wales.

### Strategic outcomes

#### 1. Increase the proportion of people enabled to live independently

The available evidence collected as part of this evaluation suggests that there has been a significant increase in the take-up of direct payments. For example, in 2005-06 an

estimated 37,000 adults in England and Wales received direct payments during the year, increasing from 24,000 in 2004-05. People with learning difficulties and mental health conditions are less likely to take up direct payments.

There has also been an increase in the number of users of the Independent Living Fund. However, and despite a decrease in permanent admissions to residential and nursing care institutes since 2003, over a quarter of a million adults remain supported by local authorities in institutional care in England alone. An increase in the amount of care provided in the community must be judged against a continuing reliance on the support provided by informal, unpaid carers such as family members. A survey revealed that 45 per cent of all people providing support for those with disabilities and/or long-term health conditions are 'immediate' or 'other family members'.

### **2. Achieve greater equality in healthcare outcomes between disabled and non-disabled people**

There has historically been a shortage of quality empirical data about the differences in healthcare outcomes between disabled and non-disabled people, partly because such data is not collected, and partly because of a lack of analysis or reporting.

However the DRC's recent formal investigation into health inequalities did generate significant evidence of the scale of health inequalities facing people with mental health conditions and/or learning disabilities.

The investigation has prompted some action by the Department of Health, the Welsh Assembly Government and professional bodies such as the Royal College of General Practitioners and the British Medical Association. However, it will take many years for good practice to have an impact on health outcomes.

### **3. Achieve greater equality in access to healthcare between disabled and non-disabled people**

The evidence collected as part of this evaluation suggests that access to healthcare services can be a significant problem for some disabled people. A survey undertaken on behalf of Leonard Cheshire in 2003 found that 20 per cent of the disabled people who responded said it was difficult or impossible to access healthcare and one in seven could not collect prescriptions.

However, again there is virtually no robust trend data available to enable us to comment on whether the situation is improving or not. The survey data that does exist suggests wide variation in disabled people's experiences of service accessibility, including the attitudes and approach of healthcare professionals.

#### **Intermediate outcomes**

##### **A. Influencing legislation and policy around independent living**

The DRC enjoyed a close working relationship with the Department for Work and Pensions on its Independent Living Review and in relation to the Independent Living Bill, which the DRC helped Lord Ashley to draft. The DRC also established a broadly-based coalition of organisations working on this issue (for example, carers' organisations and the Equal Opportunities Commission).

Frustrations remain over a slow timetable for introduction, though there is a growing recognition amongst civil servants that there is widespread support for legislation in some form.

Despite setbacks, more concrete progress has been made in Scotland and Wales, partly due to the very different policy environments in the devolved administrations.

In Scotland, for example, (where the Independent Living Bill would not apply), the DRC has pursued a robust, evidence-based 'line of attack', and received support from the Scottish Parliament's Equal Opportunities Committee for the creation of an Independent Living Taskforce.

### **B. Raising awareness of rights to fair and equal treatment amongst disabled people and providing support**

Disabled people who made use of the information and advice about health and social care services available through the DRC's website, Helpline or printed materials had very positive feedback, with one participant in the evaluation fieldwork saying that 'the DRC gets it right and is a role model for everyone else', thanks to the accessibility of the information it provides.

However, the majority of research participants, and in particular those who had not made use of DRC information and advice about health and social care services, felt that the Commission could have worked much more closely with local voluntary sector groups. There was also a strong consensus amongst research participants that the DRC was not known about widely enough and 'needs a more public face'.

### **C. Working with health trusts and boards to raise awareness of the barriers that disabled people face, with a view to improving access and health outcomes**

The evaluation has made two main types of finding regarding this outcome: about the initial impact of the DRC's awareness raising work from the perspective of healthcare managers and professionals; and about the broader impact on access and health outcomes, from the perspective of disabled people.

In the first, a good deal of progress has been made, at least from the point of view of managers and professionals who had received DRC information or

advice: in common with colleagues in other sectors they regarded Commission material very highly. Impact has been made in Scotland via the Fair for All Disability Partnership, with comprehensive guidance published for all Health Boards.

The picture in terms of health outcomes and access to services is very mixed, with challenges around staff attitudes and assessments remaining, as well as there being patchy access to information for disabled people. Common problems included long waiting times for assessments and multiple assessments.

### **D. Raising awareness about health inequalities and incorporating disability into frameworks of measurement**

Whilst it is too early to evaluate the broader impact of the formal investigation into health inequalities, the Department of Health issued a response and established a Delivery Group to take forward planned activities. The Department set up a high-level implementation group to take forward the DRC's recommendations and published proposals that, if put in place, would require Strategic Health Authorities to monitor health outcomes according to disability. As part of its DED work, the DRC has undertaken an assessment of the Disability Equality Schemes of all Strategic Health Authorities in England and Wales, as well as a number of Primary Care Trusts. The DRC has also worked with the Royal College of GPs to produce learning materials for GPs.

DRC Wales has already achieved concrete outputs, including annual health checks for people with learning disabilities and GP contracts that reward accessibility. This is despite suffering from a lack of a joined-up approach across England and Wales at times.

### **The DRC Helpline and website**

The DRC's Helpline began as a service originally designed to simply fulfil requests for publications but evolved over the lifetime of the Commission into a service that received 100,000 annual contacts by voice, text, videophone, freepost, fax and structured email via the DRC's website.

The Helpline was delivered in partnership with the customer care company Sitel, with the DRC providing knowledge of the law, general intelligence, contact monitoring and performance management. The Helpline handled contacts through a three-tier system, starting with basic signposting and literature requests, moving to in-depth advice on disability discrimination law, to on-site DRC information officers.

The Helpline also worked in partnership with other organisations such as the Centre for Accessible Environments to enhance the range of services offered to contacts.

Over the lifetime of the DRC, the website received around 10 million visitors to a website that was extremely broad in terms of its accessibility features and extensively user-tested.

The findings of a recent survey exploring the relationship between the DRC Helpline and website pointed particularly to the close relationship that exists between the two communications tools from the point of view of contacts. As such, the Helpline is often used in conjunction with the website by contacts who need help with interpreting website information or to discuss the implications for their specific case. In addition, Helpline data can provide important guidance on the kind of information that needs to be on the DRC website, and Helpline staff have played an important part in producing a range of Frequently Asked Questions for the DRC website.

# Appendix 1: DRC Timeline

<b>1995:</b>	The Disability Discrimination Act (DDA) is passed, with no provision for a commission to enforce it, in contrast with arrangements on sex and race.
<b>1998:</b>	The Disability Rights Task Force, set up by Government, recommends the establishment of a Disability Rights Commission (DRC).
<b>1999:</b>	The Disability Rights Commission Act is passed, enabling a commission to be established with legal duties and powers.
<b>25 April 2000:</b>	The DRC opens its doors for business.
<b>2001:</b>	Amended by the 2001 Special Educational Needs and Disability Act, Part 4 of the DDA makes it unlawful for education and training providers and other related services to discriminate against disabled people.
<b>2002-03:</b>	The DRC runs its Educating for Equality campaign to promote the new education duties.
<b>April 2003:</b>	People who are registered blind or partially sighted are automatically deemed as disabled for DDA purposes.

<b>September 2003:</b>	In education, the requirement to provide additional auxiliary aids and services (such as notetakers or specialist equipment) for disabled people comes into force.
<b>2003-04:</b>	The DRC runs its Open 4 All campaign, in anticipation of the new Part 3 duties affecting goods and services providers.
<b>2004:</b>	The DRC supports the Mickle and Archibald cases, which usefully clarify the scope of the DDA with regard to employment (failure to make reasonable adjustments can amount to constructive dismissal; redeployment without competitive interview to a more senior post can constitute a reasonable adjustment).
<b>2004:</b>	The DRC and the Department of Health set up a joint framework for the improvement of services to disabled people within the National Health Service (NHS).
<b>2004:</b>	Web Access and Inclusion formal investigation carried out.
<b>1 October 2004:</b>	Changes to Parts 2 of the DDA come into force, making it unlawful for all employers regardless of number of employees (excluding only the armed forces) to discriminate against disabled employees and meaning that anyone who provides a service to the public has to make reasonable adjustments to the

	<p>physical features of their service. New areas such as practical work experience and employment services were also covered.</p>
<b>2004-05:</b>	<p>Major training programme on Part 2 of the DDA for advisors within partner organisations such as Citizens' Advice, trade unions and the Law Centres Federation. The DRC's employment campaign targeted at small employers is launched, with radio adverts.</p>
<b>2005:</b>	<p>Launch of a formal investigation in England and Wales into the experiences of people with learning disabilities and people with mental health conditions using primary healthcare services. The report from the investigation was published in 2006 and found a significant divergence in access for people with mental health conditions and/or learning disabilities.</p>
<b>2005:</b>	<p>The DRC's short film, 'The Appointment', shown in cinemas and at conferences and distributed via the Helpline. The film seeks to change widely held attitudes regarding employing disabled people.</p>
<b>September 2005:</b>	<p>New duties mean that adjustments to the physical environment of education institutions must be made.</p>

<b>December 2005:</b>	The DDA 2005 passed, including a broader definition of disability, a disability equality duty for the public sector, new duties on public transport and private hire vehicles and in housing. Publishers become liable for publishing discriminatory advertisements by others.
<b>2005-06:</b>	'Raise your EQ' campaign runs, to get public bodies compliant with the disability equality duty (DED).
<b>January 2006:</b>	The DRC discontinues its case work function and, in England, funds a number of posts at Law Centres through the Law Centres Federation. In Wales, the DRC worked with the Citizens Advice Bureaux network to build the capacity of its advisors on DDA-related cases.
<b>January 2006:</b>	The DRC launches its 'Are We Taking the Dis?' advertising campaign, emphasising the need for public policy change.
<b>2006:</b>	'Fair For All' – a strategic partnership is developed jointly by the Scottish Executive and the DRC. The DRC works closely with NHS Health Boards across Scotland to help them respond to their duties under the DDA.
<b>September 2006:</b>	New legal duties affecting post-16 education providers come into force.
<b>December 2006:</b>	The DED comes into force.

<b>February 2007:</b>	The DRC publishes its 'Disability Agenda' to 'put disability equality at the heart of public policy'.
<b>September 2007:</b>	The DRC publishes the findings of its final formal investigation on the regulation of health in teaching, nursing and social work; an update on progress in relation to its health formal investigation; and its seven year impact report, 'Celebrating the Journey'.
<b>30 September 2007:</b>	The DRC closes.

**Please note:** this table presents a selection of key milestones in the life of the DRC and the evolution of disability discrimination legislation since 1995. It is not intended to be exhaustive.

# Appendix 2: What do we mean by 'outcomes' and 'outputs'?

Some of the language used to measure and demonstrate outcomes can be confusing. For the purposes of this evaluation, we based our definitions of key terms on the framework developed by Charities Evaluation Services<sup>2</sup>:

- **Outputs**

Outputs are all the detailed activities, services and products an organisation actually does or provides.

EMPLOYMENT EXAMPLE: 'number of training events'.

- **Intermediate outcomes**

Intermediate outcomes are what happen directly as a result of outputs. Outcomes are the changes, benefits, learning or other effects that happen as a result of activities. Intermediate outcomes represent the steps along the way to achieving strategic outcomes, and can be useful to measure when strategic outcomes are difficult to assess or will take a long time to achieve.

EMPLOYMENT EXAMPLE: 'successful influencing of employment legislation'.

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2 See the Charities Evaluation Services website:  
[www.ces-vol.org.uk](http://www.ces-vol.org.uk)

- **Strategic outcomes**

Strategic outcomes are the intended 'end point' of activity in a certain area. They usually take a longer time to achieve than intermediate outcomes, and taken together form the basis for an organisation's strategic vision.

EMPLOYMENT EXAMPLE: 'higher percentage of disabled people of working age in employment'.