

# Disability Rights Commission

## Learning lessons: The DRC's Legislative Review

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# Executive summary

The Learning Narratives project contributes to the broad legacy strategy of the Disability Rights Commission. It considers what the DRC has learnt through its various activities since 2000 and focuses on specific activities or overarching themes where the DRC has had direct involvement.

Each narrative responds to questions such as 'why did we, the DRC, try to do what we did?', 'what worked?' and 'what didn't work and why?' and draws on a range of data sources, not least of which is the experience and expertise of DRC staff, both past and present.

This narrative will consider what can be learnt from carrying out reviews of legislation by looking at two such reviews completed by the DRC. It will also reflect on what can be done to overcome the typical barriers encountered in carrying out such reviews.

## **The DRC's Legislative Review: key lessons**

- From the outset evidence should be collated against clearly defined and transparent criteria.
- The provenance of each piece of evidence needs to be clearly identified.
- Evidence should be gathered from the widest range of sources, including drawing upon the service delivery aspects of the Commission.
- The review team should draw on specialist individuals (both internally and externally) to support the process, providing a level of expertise, external scrutiny and credibility.

- Where gaps in evidence are identified, further forms of information gathering should be pursued in order to establish the most robust picture of 'what is happening on the ground'.
- When undertaking external consultation, the consultation paper should be written to inform stakeholders of the purpose and scope of evidence already collated. This will avoid duplication of time & effort and support the engagement of stakeholders.
- Reviews should always involve those stakeholders who will be directly affected by the proposed recommendation.
- A three-month consultation process is the minimum, and needs to be supplemented by a variety of more in-depth forms of engagement at all stages.
- When communicating with stakeholders, a wide range of methods should be utilized, including electronic, paper-based and face-to-face formats.
- Arranging and undertaking consultation with stakeholders always takes longer than anticipated!
- Clear parameters regarding the outcomes of any review should be established from the outset. Any recommendations should directly derive from the evidence collated.
- Proactively managing strong, open and long-term relationships with all stakeholders leads to better outcomes.

# Introduction

This narrative will try to show what can be learnt regarding how reviews of legislation can be undertaken, and will reflect on what can be done to overcome some of the barriers encountered.

The narrative will consider two DRC legislative reviews. The first – entitled 'Disability Equality: Making It Happen'<sup>1</sup> – was conducted in 2003 and was the DRC's official report on reforms needed to the Disability Discrimination Act (1995). The review was part of the DRC's statutory obligation to review the relevant disability legislation and was based around both internal DRC evidence gathering and extensive consultation with disabled people, employers and businesses. The second is the recent one concerning the Education aspect of the legislation. This was conducted in 2006 and involved similar processes to the first review. Within this narrative, aspects of this Review which can offer additional relevant lessons are included as examples.

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1 Available online: [http://www.drc-gb.org/pdf/4008\\_249\\_Legislation%20Review.pdf](http://www.drc-gb.org/pdf/4008_249_Legislation%20Review.pdf)

# Background

The story of the Legislative Review begins in 1997 with the Disability Rights Task Force (DRTF). The DRTF was set up in 1997 and advised on how to deliver the Labour Party's manifesto commitment to deliver enforceable and equal rights for disabled people. The final DRTF report – 'From Exclusion to Inclusion'<sup>2</sup> – was published in December 1999, some three months before the DRC was set up.

Once the DRC was established in 2000, Commissioners felt they should build on the recommendations of the DRTF in order to create the DRC's statutorily required law reform agenda.

The concern to strengthen the Taskforce proposals, without delaying the government's implementation of them, required a delicate balance to be struck both in the nature of the proposals put forward, and the manner in which they were consulted upon and publicised.

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2 Available online: <http://www.leeds.ac.uk/disability-studies/archiveuk/disability%20rights%20task%20force/drtf.pdf>

# The Legislative Review process – internal and external evidence

Upon starting the Legislative Review, at its core was the ethos that all recommendations were to be based on strong evidence. This was thought essential in order for those in central government to take the claims and proposals made seriously. The evidence used to do this was drawn from a number of sources that can be grouped into two main headings: internal DRC evidence and external stakeholder evidence.

## **Internal DRC evidence**

The Legislative Review drew heavily upon the service delivery aspects of the DRC (from the Helpline to case work, practice development and the legal team), which gave it strength and credibility when tested externally.

For example, the DRC's Helpline and comprehensive research and legal functions provided the basis for the draft recommendations in the Review. Evidence regarding the common problems disabled people were encountering in the real world were pulled together and the most prevalent issues used as a basis for internal discussion around how legislation could be reviewed to affect change in these areas.

Internal groups such as the Learning Disability Action Group (LDAG) also discussed the proposals for the Legislative Review and inputted their own changes or amendments before the initial draft proposals went to consultation or the Commission.

The Legislative Review team reviewed all Employment Tribunal cases where individuals lost a case on the basis that they were not 'disabled' under the DDA. This critically informed proposals regarding the definition of disability.

Similar processes were successfully used again in the 2006 Education Review. For example, the Education Review team collected all the cases relevant to education that came through the Helpline, casework team or legal teams and again drew out relevant educational themes which went on to form the basis of the consultation document.

The innovative approach of consulting internal evidence sources nicely juxtaposes with the different, though still effective, method for evidence gathering used by the Disability Debate. The Debate initially gathered its evidence through dialogue with disabled people – a primarily external exercise. Where the Legislative Review differs is that it could focus primarily on internal data sources to identify and refine all relevant issues before taking them to external audiences.

Such an approach not only saves money but, more importantly, also save the time and effort of those you consult. This means that real added-value can be achieved through consultation.

It is however vital to avoid assuming that the voices heard by the DRC are necessarily the voices of all disabled people.

There is a risk that for whatever reason information isn't coming in to you. People don't know about the Commission or don't come to you. You can't be sure that you are covering these people – you just have to ask yourself: are the right people using the DRC services that we develop this evidence from?

**Member of Legislative Review team**

In the case of the Legislative Review, it was felt the answer to this question was 'yes'. The reasoning was that the high volume of information coming through channels such as the Helpline meant that many of the legislative problems being faced by the disabled people in Britain were being represented.

### **External evidence, consultation and stakeholder meetings**

Reviewing previous research helped the Legislative Review team develop a strong basis for recommendations to complement the internal evidence gathering before consultation. At the core of this evidence-gathering exercise were two previous Department for Work and Pensions (DWP) research reports on the operation of the DDA: 'Disabled for Life: attitudes towards and experiences of disability in Great Britain'<sup>3</sup> and 'Monitoring the Disability Discrimination Act 1995'.<sup>4</sup>

In addition to these research reports, a significant consultation was conducted with disabled people, businesses and employers. There was a strong response to the consultation from a broad range of the DRC's stakeholders, with responses balanced and broadly in agreement with the DRC's proposals. This positive outcome is largely felt by those involved in the Review to be due to the rigour of the internal evidence gathering process used before consulting externally. There was a similar outcome for the 2006 Education Review as well.

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3 Gewal, I, Joy, S, Swales, K, Woodfield, K, Disabled for Life, attitudes towards and experiences of disability in Britain, DWP 2002

4 Leverton S., (2002) Monitoring the Disability Discrimination Act 1995 (Phase 2), London: Department for Work and Pensions

Despite the success of the consultation, the DRC reflected on the consultation process and acknowledged the following key learning points:

- Ensure a minimum of a three-month consultation process
- Systemise and expand mailing lists
- Improve the capacity of Helpline (or other internal evidence gathering tools)
- Ensure that the questionnaire can be downloaded and emailed
- Ensure timely processes for producing accessible publications for learning disabled people

### **Stakeholder meetings**

Stakeholder meetings were used in both the Legislative and Education Reviews to supplement the wider consultation process. The focus in both was on involving people who the recommendations of the Review would directly affect. For the Legislative Review, meetings with disabled stakeholders and employers' representatives were held and used to test the amount of support for the proposals put forward. The focus of the Education Review meetings of relevant stakeholders – including staff from colleges and schools, trades unions, parent representatives and qualifications bodies – were to ask stakeholders if they thought the recommendations were relevant and whether all the issues were covered.

Stakeholders were able to raise issues which they felt should have been addressed by the proposals. For example, the proposal that the questionnaire procedure should be available in cases of pre-16 discrimination was added as a result of responses to the Consultation.

Whilst the strong support for a shift to a social model of disability did not lead to an addition to the Legislative Review

proposals, it did lead the DRC to commit to examine this issue at a later date. This commitment was honoured in 2005, with a separate consultation on this issue.

In both cases, the benefit of stakeholder meetings is that the view from the ground is heard. The people participating could give first hand knowledge of what they feel the issues that may have been missed are and offer up any potential pitfalls regarding implementation of the recommendations so that these can be addressed before the Review is finalised.

Generally they loved it all. Quite a useful meeting – all agreed on what the problems were but not quite sure what the answers were. One example was auxiliary services (in education). They all knew this was lacking but there was little consensus about how to solve this.

**Member of Education Review team**

The proposals commanded a great deal of support across the groups – not sure exactly to what extent they were modified, really only modified around the edges.

**Member of Legislative Review team**

One lesson learnt from the supplementary Scottish Education Review was that the time and effort required to involve disabled people is greater than one might anticipate. It was found to be particularly difficult to recruit younger disabled people because they aren't traditionally members of disability groups or organisations. Thus, the conclusion of the team on the Scottish Education Review was that it is best to involve a group such as the Children's Commissioner (In Scotland) to assist with any efforts to consult with younger disabled people.

My advice is to get involved with a specialist organisation for Children (to recruit children to consult directly) rather than (an organisation for) disabled people.

**Member of the Scottish Education Review team**

# Collaborative working

## **Civil servants**

The secret of the success of the DDA (2005) – which was based on the Legislative Review – was close working with civil servants.

It was important for the DRC to know how government would react to the proposals contained within the Legislative Review. Thus, fostering good working relationships and close collaborative working ensured that this was achieved as far as possible.

It allowed the DRC to work out what the parameters of the Review were and what the Government wanted. Work in a way that enables them to trust you.

### **Member of the Legislative Review team**

Meetings were held at frequent intervals between the civil servants responsible for assessing the Legislative Review and the team at DRC. The civil service would not interact with the DRC in this way and a more traditional route would be to contribute only to more formal discussions and meetings. The very close working approach established, however, was considered in the DRC to be an unusual but effective approach.

## **Expert disabled stakeholders**

A close collaboration was also fostered with expert disabled stakeholders. Specific stakeholders were hand picked on the basis of their expertise and track record of working inside or with the public sector and invited to contribute their thoughts to the Legislative Review. Small focused meetings were held

between the DRC, civil servants and disability experts throughout the process of the Review.

Encouraging all the high level implementation stakeholders to engage with each other in this way allowed all parties to understand the development of the Review from the beginning. This was especially relevant to the civil servants who could see that organisations and individuals who would benefit from the recommendations felt that the Review was necessary and well constructed.

It is one thing to show statistics (eg 82 per cent think this is a good idea) but another to show them the real people.

**Member of the Legislative Review team**

The learning from this is that strong, open and long term relationships bring better results. These working relationships already existed between the DRC and the civil service, but the way in which these relationships were managed is considered to be the key.

They need to feel that you are not just taking one person's perspective – for example that we knew how employers worked, that they knew what was achievable and realistic. **Member of the Legislative Review team'**

The trust between all parties was put into practice during the consultation process, which was kept low key on the advice of the civil service. They felt that too much publicity might unnerve the government and hinder the adoption of any Disability Bill. Such advice – and its acceptance by the DRC – furthered the relationship and one of the aims of the Review: not to attempt to win all recommendations immediately but to focus on the long term gains and relationships that could be made.

This approach makes sure that they know that you are not making it up, that they know that strong evidence is behind the claims.

**Member of the Legislative Review team**

This long-term approach was reflected in the final recommendations made in the Review:

Issues weren't put in because they were wanted only in a perfect world, all recommendations were realistic but you have to accept that some things are going to take longer to get to than others. We focused on having a mix of these.

**Member of the Legislative Review team**

# Getting the proposals adopted

Through working through the steps outlined above, the Legislative Review was finalised and the process of popularising and campaigning for its recommendations to be implemented was stepped up. To achieve this, parliamentary work was conducted by the DRC Parliamentary Affairs team. The aim of this work was to give the government further confidence in what they were being recommended to do.

To campaign for the Bill, and to popularise the evidence behind it, the DRC drafted and submitted a private members bill to air some of the issues raised. The bill was drafted by the DRC and sponsored by Lord Ashley.

The purpose of the bill was to put forward goals for the longer term just as the purpose of the Review was to build the case for change, some of which you would hope would happen straight away some in the longer term.

**Member of the Legislative Review team**

# Concluding remarks: was the Legislative Review 'successful'?

It is difficult to do a head count... some proposals are much more significant than others and some are much tougher to get than others.

## **Member of the Legislative Review team**

On the whole, reflections from within the DRC are that the Legislative Review was extremely successful.

The Disability Discrimination Act was passed in 2005 and carried forward all outstanding Disability Rights Task Force recommendations, as well as many of the recommendations contained within the DRC Legislative Review. Specific elements of the Review's proposals were also adopted through the employment regulations (introduced as a result of having to implement the European employment framework directive) and a variety of other Acts which picked up elements and made them law.

There is still some level of hope within the DRC that a portion of the outstanding regulations will be passed into law through the Single Equality Act. This is also the case with the Education Review.

Other proposals have been taken forward in non-legislative ways but still to good effect. One example is the case of the employment proposal not to allow pre-interview questions regarding disability. This proposal has been resisted by the government because it is said that the level of bureaucracy and burden on employers would be too high but, despite this

resistance, the recommendation has been taken forward and included in the Employment Code and Public Sector duty Code. The underlying lesson is that even though this particular recommendation is not law, the Legislative Review has still affected the lives of Disabled people in this area.

This reflects the steady process anticipated by the DRC team working on the Review and demonstrates the long term effect of the work. It also demonstrates the effect of the long term approach taken and the collaborations and relationships developed with all the key stakeholders in this work. It was the strength of these relationships and the high credibility of the team, which was legally qualified with good experience in disability discrimination law, that meant this issue remained on agendas long after the Review itself took place.