

Tuda News

June, 2004

Special TUC Disability Seminar Edition.

The long awaited Draft Disability Bill has been published and been through Scrutiny Committee – but how far has it gone to cover the concerns of disabled trade unionists and disabled people on the whole?

Well the Draft Bill has certainly attracted many comments but what is still missing? What do we need to continue campaigning on?

In this edition of TUDA News we will try and explore some of the major points – however if you want to find out more then don't forget the joint TUDA/DRC Fringe, at lunchtime at this Seminar!! – Speakers will include our Co-Chairs so come along and support them!

We may not have won Euro 2004 football but the message from Amicus is definitely – We are the Champions!!

Report by Alan Martin TUDA Executive Member.

Everyone was in celebratory mood at Amicus' office in King Street, London where the Amicus Disability Champions at Work Conference was held. Disability Champions, employers and work place representatives met to celebrate the success of the project. For 18 months, Amicus has been running the project, which aims to train workplace representatives to become disability specialists where they work. These Champions are at the forefront of making workplaces truly inclusive for disabled people. Amicus' original target was that 50 reps. would volunteer to be trained in the first year. That target was met in the first five months of the project. Amicus now has over 90 Disability Champion in workplaces where it is organised.

The 60 delegates attending the conference listened to speakers who highly praised their efforts to negotiate best practice for disabled people where they work. Maria Eagle, Minister for Disabled People, said that this project was exactly what was needed in order to deliver the government's equality agenda for disabled people in the workplace.....how.....by actually putting the law into practice, in partnership with employers.

Richard Howitt, MEP and President of the European All Party Disability Group [and long time supporter of TUDA] added that this project is what is needed to make disabled workers aware of their rights at work, as many people were unaware of their employment rights. Lucy Anderson, Amicus Deputy General Secretary, paid tribute to Amicus workplace reps. Dave Williams, an Amicus Disability Champion, and Amanda Dillon, a representative of employer CIS, both outlined how they had been able to make real changes in the workplace by working together.

Training has been rolled out to workplace reps. From other TUC affiliates, for example, Unison, the ISTC and GMB. The project has greatly surpassed the expectations of those Amicus representatives who initiated it. It has now become an essential part of the skill-set of activities from across the trade union movement.

For more information about the project and contact details for those involved can be found on the website behind the project.

www.disabilitychampions.com or by contacting Alan Martin through TUDA.



Anne Pridmore Chair of the UK Disability Forum for European Affairs tells us about the Women's Committee and the Information Pack they have produced on support for disabled women who have experienced violence and abus.

“The UK Disability Forum for European Affairs (UKDFfEA) Women's Committee is the only national organisation of disabled women in the United Kingdom (UK). **The Women's Committee was founded in 1999 by the [UK Disability Forum for European Affairs](#) (UKDFfEA), and currently meets every three months.**

- Membership is restricted to disabled women living in the United Kingdom (UK), some of whom represent organisations belonging to the UKDFfEA and some of whom are individuals.
- In 2000 the Women's Committee obtained funding from Comic Relief to hold a disabled women's conference on violence and abuse; to develop a website; and to produce a disabled women's information pack on violence and abuse. The pack is available in Braille, audiocassette, large print, sign language video and standard print – each format can be purchased separately or as the whole pack for £40.00.

Anne tells us of the need for a Disabled Women's Committee:-

“We need a Disabled Women's Committee because:

- Women's issues are forgotten by the disability movement
- Disability issues are forgotten by the women's movement
- Disabled women suffer the highest levels of violence and abuse, but have the fewest safe spaces “

To find out more or to order a pack please contact Anne Pridmore, Llamedos, 60 East Street, Market Harborough, LE16, 9AE or by e mail

llamedos@enna.fsnet.co.uk .

New potential trade union members??

An update on New Deal for Disabled People.-

Three years ago TUDA were commenting on the Job Broker scheme we are now quoting from the latest release from the TUC – although the figures are encouraging that disabled people are getting back into work – the over-hanging issue still remains – what sort of jobs are being obtained and where?

“In December 2003, there were 52,120 participants in the programme and 33,640 disabled people registered with a job broker in 2003. In the same period 17,860 jobs were gained by participants in the programme, of these 12,860 obtained the jobs through brokers and the rest through the New Deal for disabled people Jobcentre plus jobs.”

Just a little caution and a reminder that job brokers do not accept everyone who comes through their doors and often acceptance onto the job brokers books is as a result of their opinions on perceived “employability”. The disparity between which disabled people and those from ethnic minorities continues to be extreme and worrying. Statistically a difference of over 13% between which disabled and ethnic minority disabled obtaining employment. The London effect also continues in that the capital continues to lag behind other regions. For the full report follow the link <http://www.tuc.org.uk/welfare/tuc-7852-f0.cfm> also the Disability briefing Jan 04 on the DRC homepage has further information.”

Roy Webb – vice chair of the British Council of Disabled People and long time member of the TUDA Executive poses the following question in relation to the Draft Disability Bill- “Where is that fully comprehensive and enforceable anti-discrimination legislation?”

Roy told TUDA News that the long awaited Draft Disability Bill is causing more debate in Parliament and in the disability movement than there has been for many years.

TUDA activists and other activist have for many years continued the campaign for new legislation which will bring about fully comprehensive and enforceable civil rights for disabled people.



How much further down the road does this new bill take us from the existing Disability Discrimination Act (DDA).

Rachel Hurst of Disability Awareness in Action and who has been centrally involved in the heart of the campaign for civil rights write about her views:-

“Where is that fully comprehensive and enforceable anti-discrimination legislation?”

Below are just the main issues with regard to the DDA, the Draft Disability Bill and the Joint Committee recommendations to help you to discuss what you want to focus on when influencing your MPs, unions, employers and local authorities.

1. The main areas that are wrong with the current DDA:

- The definition of disability is based on the medical model of disability which prevents many disabled people from seeking protection from the law.
- Actually justifying discrimination in some areas
- Exclusion of transport – except stations
- Exclusion of education – this has since been taken up by the SENDA (Special Education Act)
- Exclusion of landlords, private clubs and providers of insurance from Part 3 (Access to public facilities)
- No duties on public sector authorities to promote equality – as the other equality legislation does.
- Exemptions for the armed services, police, fire services and other public bodies.
- Disability Rights Commission (DRC) not given powers to take cases under the Human Rights Act
- Employers with under 15 employees, volunteers and elected members of local authorities etc. are exempt from employment provision.

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2. What does the Draft Disability Bill do?

- Cancer, MS and HIV infection are now included from the moment of diagnosis, within the definition.
- It outlaws discriminatory advertising,
- Providers of group employment insurance are no longer exempt.
- It includes transport vehicles – but does not give any end date by which the transport, especially trains, should be fully accessible.
- The exclusion of small businesses is now removed. (this was because of an EU directive on employment) as are private clubs with over 25 members.
- They consider education to be covered by SENDA
- They have introduced duties on public sector authorities **not to discriminate and** to promote equality but have exempted the justice system, among others.
- They have lifted the exemptions for the police and fire services but not the armed services.
- Strengthened the duties on landlords and small dwellings.

3. Major issues that the Joint Committee of the House of Commons and House of Lords have recommended.

- ✓ That the DRC should advise on how a social model definition of disability could be used and meanwhile to also include all progressive conditions and intermittent conditions and to include mental health on medical evidence – not just on ‘clinically well-recognised’ criteria. The Joint Committee felt that anti-discrimination legislation should be focused on the discrimination not the exact nature or extent of a person’s impairment. (this is a great breakthrough)
- ✓ Recommended that the Bill be more precise as to what is meant by a public authority in order to ensure greater clarity and to ensure consistency with other anti-discrimination legislation.
- ✓ Felt that the provisions on housing are inadequate and that landlords should not unreasonably withhold consent to the making of physical alterations to a property. And that the government should introduce an accessible housing register.
- ✓ The Committee made several recommendations regarding transport, including an immediate setting of an end-date, which they feel should be 2017 and that improvements in access should be an integral part of the refurbishment process.
- ✓ They recommend that all statutory elected and appointed office and post-holders are included as well as disabled councillors protected from direct discrimination in appointments.

As you can see, the Joint Committee recommendations are really moving things forward. It is particularly good that they have promoted the social model definition of disability.

However, they still have not dealt with the justification element of the DDA or promoted the right of the DRC to take cases under the Human Rights Act.

And the real problem is that we don’t know what the Government will do with the Committee’s recommendations. They may ignore them.

Rachel Hurst.”

Many of the above points were raised in the TUC and other organisations responses to the Draft Bill however the TUC did make some important additional proposals. The TUC is in addition

concerned that important areas are being left to future regulations. It is also a matter of great importance that the new bill is finalised and legislated as a matter of urgency, so commitments on the timetable would be welcomed.

The TUC have responded to the Draft Bill and the full text is available on the TUC Web site www.tuc.org.uk , however for ease and completeness the following is a comprehensive extract:-

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- Legislation should seek both to complete the steps promised in the government response to the Disability Rights Task Force, and take into account other developments since that time that have shown up additional problems with the existing law and its interpretation in practice.

- Definition of Disability.

Within the context that we are concerned that a medical definition of disability is the wrong approach to take to dealing with discrimination,

but understanding that this is the fundamental basis of the DDA itself, we

would therefore encourage the widest possible and most inclusive possible definition within the law. The point most often drawn to our attention as being a problem with the existing definition is the narrowly-interpreted DDA definition of mental health problems. At a time when stress-related illness is well understood to be a serious and rapidly increasing problem for many workers, many employers have been able to avoid liability under the DDA for addressing this by claiming successfully that employees failed the eligibility test on one or both grounds. The TUC would therefore press the government to recognise the importance of this issue, the need to end this anomalous and exclusionary restriction, and to amend the DDA accordingly.

The TUC also supports the Disability Rights Commission's Legislative Review recommendations that the list of 'normal day to day activities' that form part of the DDA's definition of disability should be revised and extended, the current range being too narrow. Further, the TUC supports the DRC recommendation that anyone in receipt of a disability benefit is automatically included within the definition of

disability. Finally, the draft bill fails to address the issue of discrimination on grounds of 'genetic predisposition' to a condition, which in the view of the TUC should be covered explicitly by the law.

- Public Duty

The creation of a public duty to promote equality of opportunity and eliminate discrimination is a very welcome and extremely positive move. Experience of the functioning of this duty in the Race Relations (Amendment) Act (RR(A) Act) confirms how useful it can be to encourage public authorities to work proactively towards equality.

However, the clause could be made still more effective than it is currently. The TUC's position is that, firstly, the RR(A) Act includes a duty on public authorities to promote good relations, and this is not contained within the draft bill. The TUC proposes that this additional duty would strengthen the measure and urges that it be added to the bill.

Secondly, there is no reason why this duty should be restricted to public

authorities, but that it should apply to both public and private bodies.

Thirdly, and even if this first argument is not accepted, there remain issues as to what constitutes a public authority, reflected in debates around the applicability of the RR(A) Act to a number of organisations.

Therefore it is proposed that alongside the broad definition of public function contained within the draft bill, there should be a clear statement by the government that the measures must be read as including

all bodies already listed as being covered by this duty under the RR(A) Act.

- Scope and coverage

The bill's proposals to extend the coverage of the DDA to new groups of

workers previously excluded are welcome. The TUC supports the further

extension of the protection of the law to those working as volunteers, as recommended by the Task Force and would urge the government to amend the

draft bill accordingly. For many disabled people, working as a volunteer can be a critical first step on the road to paid employment, and such an extension would therefore further assist the Government's objective of enabling more disabled people to obtain employment.

In line with the approach adopted in other anti-discrimination legislation, the TUC would also argue for the DDA to offer protection to

anyone perceived or thought to be disabled, whether or not they actually are disabled as defined by the DDA.

- Transport provisions.

Access to transport is of course a critical element in making access to employment a real option for most people, but for disabled people it can be, and is, frequently an insurmountable obstacle because of the failure of the DDA to enforce the accessibility of the actual means of transport, and the very long end dates originally established for some (but not all) forms of transport. The draft bill will give the government power to bring various forms of transport within the scope of the law by regulation, but without any indication as to when this might take place, or what end dates

will apply. The TUC therefore presses the government to publish a clear commitment to introduce such regulations within a specified time, and that

this time to be the shortest practicable, to ensure that all forms of public transport are covered in the scope of the law by the earliest possible date, otherwise many disabled people will continue to be unable

to access employment or to assert other civil and human rights.

- Reinstatement

The TUC is disappointed that tribunals do not use their power to recommend

an employer found to have discriminated under the DDA to reinstate or re-engage the disabled person, and believes that tribunals should also have the power to order this, as can be done with unfair dismissal cases.

The strengthening and much greater use of this power was a change called

for by the Task Force and supported in the government response, but it is

not included in the draft bill. It is well known, and evidenced by government statistics, how difficult it can be for a very large proportion of disabled people who wish to work to obtain employment. Disabled people

who have jobs and have lost them will often find it more difficult than it is for a non-disabled person to obtain new employment. In circumstances

where discrimination by the employer has been proven, it may be that some

claimants would prefer to be restored to their employment to receiving financial recompense, but remaining unemployed. Therefore the TUC urges

the government to add a clause creating the power of tribunals to require

employers to offer reinstatement or re-engagement in these circumstances.

- Disability-related questions

The Task Force recommended that questions about a job applicant's disability should only be permitted in very limited circumstances before a job is offered: these being to establish whether reasonable adjustments were required in the recruitment process, or whether they would be required to carry out the job itself. Otherwise, they should only be permitted after a job had actually been offered. The TUC strongly supported this case, and the continued evidence of the cases taken under

the DDA in the time that has elapsed is that it is extremely hard to demonstrate discrimination at the stage of recruitment, while the very slow progress in increasing the proportion of disabled people in employment suggests that discrimination at the recruitment stage might be

a significant contributory factor. In their response, the government refused to adopt this recommendation for fear that too many employers (especially small employers) would be caught out by inadvertently 'asking the wrong question.'

The omission of this proposal from the draft bill indicates that the government has not changed its view. However, the continued discrimination

already mentioned makes, in the view of the TUC, an unanswerable case for

strengthening the DDA as it applies to recruitment. The proposed change

would not necessarily be difficult to understand, and could easily be explained to employers. The level of ignorance among employers generally

about the provisions of the DDA has been found to be widespread and profound, so a campaign of information about all the provisions of the law

will be necessary, in particular for small employers who are currently exempt from the employment provisions of the DDA.

- Disability Leave

The TUC has for many years argued the case for the promotion of disability

leave as a reasonable adjustment by employers to enable workers who acquire an impairment, or whose condition changes, to be allowed time to

adjust without fear of losing their employment. The concept was strongly

advocated by a number of organisations led by the RNIB, piloted during the years immediately prior to the DDA, and has been usefully adopted by a number of employers. A number of unions report the successful adoption of disability policies negotiated with various employers. The Task Force recommended that the government give greater emphasis to this adjustment in its published guidance. The DDA could reflect this by including disability leave in its list of reasonable adjustments that an employer should consider, from which it is currently absent, and the TUC would urge that this addition be included in the draft bill.

- Anticipatory duty

Parts III and IV of the DDA, covering goods and services and education, already create an anticipatory duty on service providers, and the TUC supported the DRC's submission that this should be extended to the employment (part II) provisions. It is apparent from the experience of unions that there are many systematic barriers to disabled people finding employment, and currently an employer's duty to make adjustments arises

only with regard to individual employees. The absence of an anticipatory duty has particular impact in the recruitment process, and in the provision of training, with serious effects on the ability of disabled people to access employment in the first place, or to develop careers having obtained employment.

It may be the case that the new duty on public authorities will have the effect of an anticipatory duty when it comes to planning for the recognition of the needs of, and inclusion of, disabled people, in the functions of those authorities, and clarification that the duty applied to all public functions carried out by any body, which would be a welcome step, but this duty applies only to public authorities. What is required is a new clause that creates a new duty for all employers so that they consider what adjustments are needed to their premises, work practices (etc) in general, rather than wait for a particular disabled person to apply for a position who requires a particular adjustment to be made.

This

would have a far greater impact on the employment rates of disabled people

than the current individualised approach.

- Justification

Three issues arise under this heading.

The TUC has always argued that the ability of an employer to justify their act of discrimination was wrong and was not available for other acts of

discrimination. Some important changes have been made to the applicability of this defence by the European Employment directive as transposed into UK

law, with the distinction now appearing to lie between 'direct discrimination' and 'failure to make a reasonable adjustment', neither of which can in future be justified, and a (less direct) form of discrimination that can still be justified. The precise form that this distinction will take has yet to be published (through a new version of the Code of Practice being prepared by the DRC), and its actual definition

remains to be determined by case law. The consultation on the draft bill creates the opportunity for the government to clarify what is intended, and the TUC urges that this opportunity be taken.

Secondly, the right of a tribunal or court to take into account what a 'reasonable person' might think in determining whether an employer's action in a disability discrimination case might be justifiable has led, in the view of the TUC, to some perverse conclusions. The problem is that

there is no such thing as an abstract 'reasonable' person, and that everyone has their own prejudices and stereotypes, these being particularly commonplace, widespread and deep-rooted when it comes to

popular misconceptions about disabled people. Even if in the majority of cases a tribunal or court is able to distinguish between reason and prejudice, to be able to call such a view in successful defence of a discriminatory action serves only to make a nonsense of the intention of the law. In the view of the TUC, the new disability bill is the opportunity to rectify this problem.

Thirdly, as the DRC has pointed out, different thresholds exist for allowing justification for discrimination in different parts of the DDA, with different levels being required in the provisions covering employment, goods and services and now public functions. The TUC believes

there is a clear need to establish a common (high) objective standard."

TUDA officers firmly believe that we must keep putting pressure on the Government to listen to disabled people and hope you all will take forward these issues within your own branches, regions and at National level.

Disability Rights Commission publish their provisional position on the Commission for Equality and Human Rights White Paper. However there are many concerns from within the wider disability movement.

Bert Massie, DRC Chair, said: "We must ensure disabled people's voices continue to be heard and their rights enforced. "A single Equality Commission should not precede a Single Equality Act," **he added.**

A spokesperson for the British Council of Disabled People (BCODP) said the organisation was "strongly opposed" to a unified commission, warning "the equality of disabled people will drop down the government's agenda as a result". Meanwhile Steve Winyard, Head of Public Policy at the Royal National Institute for the Blind said: "RNIB, like many other disability organisations, campaigned long and hard for the creation of the Disability Rights Commission." "We are not about to sit back and watch it being abolished by the back door 2 years later."

Furthermore, there are grave concerns about the exact precision it will offer, with its claims that it will provide a good access point and good point of information. Would this not increase workload and lack of attention to one particular area?

It is clear that the new commission will be expected to carry out most of its work by promoting equality and human rights and by publishing guidance and examples of good practise. It will not have the power to take either individual or class cases using only human rights legislation.

Therefore, do disabled people really want a Single Commission, especially bearing in mind that there will be only one disabled person on the Committee. Again our concerns would be how would this person be elected and to whom would they be accountable? It is not even clear that the one disabled commissioner who will be guaranteed to be on the commission will be allowed to speak out in public about issues relating to disabled people alone, as the government says that every commissioner will be expected to reflect the concerns of all the communities represented by the commission.

With so many concerns, what do you think? You can get a copy of the proposals by going to this website
<http://www.dca.gov.uk/speeches/2003/2003fr.htm>

I wish to receive more Information about TUDA:-
Please send to: 16 Fountain Street, Birkenhead, CH42 7JH

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Please make cheques payable to Trade Union Disability Alliance.

The views expressed in this Newsletter are not necessarily the views of the union's represented on the TUDA Executive Committee but reflect the opinion and policies of most of them.