

## **Written submission from Doug Paulley (DBE0186)**

### **Abstract**

1. Enforcement mechanisms of disabled people's access to the built environment are fundamentally broken. Statutory bodies fail to play their part and enforcement action is left to individual disabled people. The barriers and risks faced by such individuals means that enforcement by these individuals is very rare and at significant personal risk.
2. The difficulties are exacerbated by the advent of specialist defendant legal representatives and increasing use of intimidatory and gagging tactics against disabled claimants.
3. The lack of appropriate housing and alternative social care provision has resulted in the institutionalisation of disabled people.

### **Me**

4. I am a wheelchair user living in a residential care home in north Yorkshire. I am known for using the Equality Act to challenge and change disabling service provision.
5. I am submitting evidence to give my experiences of attempting to ensure access to the built environment for disabled people, also due to my evidence to the Equality Act and Disability select committee and having had a recent case quoted by others in oral evidence.

### **Recommendations**

6. **Local Authorities should be mandated to take action when informed of builders' failure to comply with Part M of the Building Regulations, and to keep complainants informed of their progress.**
7. **The Public Sector Equality Duty (PSED) should be strengthened such that statutory organisations are obliged to take disability equality into consideration when undertaking statutory planning, building inspection and other activities.**
8. **Builders who are ignorant of their obligations to meet Part M should face prosecution.**
9. **The Ministry of Justice should extend qualified one-way cost shifting to Equality Act cases.**
10. **Organisations of disabled people should be able to take cases under the Equality Act, including under the anticipatory duty to make reasonable adjustments to physical features.**
11. **Councils, housing associations and ALMOs should be funded and mandated to create more accessible social housing and alternative social care schemes.**

## **The Equality Act and the Built Environment**

12. My evidence to the Equality Act 2010 and Disability Select Committee was that it is impossible for nearly all disabled people to enforce their rights under the Act. The Government response failed to acknowledge the fundamental, systemic barriers to disabled people's enforcement of such. Whilst the Government quoted my experience, it stated simply that it would attempt to ascertain how I was successful. I am dismayed at the inaccurate impression that disabled people can enforce the Act.
13. It is particularly difficult for disabled people to enforce their rights about "physical features". This is in part due to the cost of implementation of changes to buildings, but also due to the failure of statutory organisations to use their enforcement powers (despite the Public Sector Equality Duty.)

## **Enforcement of Part M of the Building Regulations**

14. Part M is poorly understood by building owners and builders. Local authority enforcement is patchy at best.

## **Example: a building alteration to a pub**

15. Some ten years ago, I worked with a local pub in Wetherby<sup>1</sup> to assist them to put in a semi-accessible toilet. It wasn't compliant with Part M, but I could use it and it was better than nothing.
16. The chain that owned the pub was recently taken over by a Manx company<sup>2</sup>. They renovated the pub, undertaking significant work to floors, walls etc.
17. As part of this work, they introduced a door across the corridor leading to the toilets. This door was too narrow to pass through in a reference wheelchair. On my first visit since it was renovated, some weeks after it had re-opened, staff were unaware of this problem. I had to demonstrate it to them. I eventually had to empty my catheter bag into the drain outside.
18. It is a criminal offence to make a building less compliant with Part M, under S35 of the Building Act 1984 as amplified by the Building Regulations 2010 3(1)(c), 3(2)(b) and (3). This attracts a fine of up to £5,000. I therefore referred the situation to Leeds City Council Building Control, stating precisely how the changes made to the building breached the Act. Building Control has not responded to me in any way (*other than an automated acknowledgement.*)
19. This left me with the task of enforcing the situation myself through the Equality Act, despite my comparative lack of resources and training and despite the Council's legal powers and responsibility to comply with the PSED. If the PSED was enforceable, they might do more.
20. In response to my Letter before Action of 7<sup>th</sup> August, the owner's solicitor<sup>3</sup> undertook on behalf of their client to "*rectify the issue by putting in a new access*

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<sup>1</sup> "[The Mews](#)," owned by [Market Town Taverns](#)

<sup>2</sup> [Heron and Brearley](#)

*door into the disabled toilet, which will be to a part M standard and they will also upgrade the toilet fittings to be a proper disabled toilet ... by 31 August."* I was very surprised and pleased as the toilet would require very significant work to comply with Part M, including moving walls, installation of an alarm system etc.

21. On 1<sup>st</sup> September, I went to the pub to discover that their only alteration had been to widen the new doorframe slightly. They had not complied with their promise to upgrade the toilet to Part M. It was still impossible for me to access the toilet.
22. The pub owner subsequently explained that their building contractor had an inadequate understanding of the requirements of Part M. The contractor had promised the building owner that they would alter the toilet to make it Part M compatible, under the incorrect assumption that widening the doorway was all that was required. The building owner and the solicitor (who had no understanding of Part M at all) took the contractor at their word. They had therefore made an undertaking to make it fully compliant without understanding to what they were committing.
23. Three months on, the toilet is still not Part M compatible and the new door is still present.
24. I have experienced a number of similar situations, which lead me to the following conclusions:
25. **Many builders and building owners are unaware of their obligations under Part M.**
26. **Local authorities are patchy (at best) in investigating and enforcing breaches of Part M.**
27. **This leaves individual disabled people with the impossible burden of enforcing their rights.**

### **A rise in the use of threats and below the belt tactics to target disabled litigants**

28. In my evidence to the Equality Act and Disability Select Committee I noted the many substantial barriers that disabled people face when attempting to enforce their rights.
29. I have often experienced distinct and unnecessary unpleasant reactions from some defendants and their representatives. This is a distinct problem in addition to all the others faced by would-be disabled litigants. Other witnesses noted the growing trend of defendants making disabled people go into intimate detail in public, to prove their disability and its effects, as a means of dissuading litigants.
30. I am concerned that this is escalating. My experience is that service providers and their legal representatives are increasingly using the emotional vulnerability of disabled claimants, and adverse costs risks, as unfair tactics to dissuade claimants from enforcing their legal rights.

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<sup>3</sup> [Lawrence Gray](#) of [Keystone Law](#)

31. Without exception, all the defendant representatives with whom I have engaged have failed to comply with the Bar Council / Law Society's guidance for dealing with litigants in person.
32. In the pub case I detail above, the solicitor accused me of copying and pasting a standard Letter before Action as published by Unity Law and of altering timescales and damages listed in that letter without legal justification or knowledge. They refused to admit fault or to offer proper reparation for the existing discrimination. They then accused me of being unreasonable for attempting to secure appropriate compensation and for enforcing their undertaking to make the toilet fully Part M compatible. Their unpleasant approach was an apparently calculated tactic, and was at distinct odds with the co-operative approach of the company itself.

### **Example: a brewery visitor centre**

33. Some 10+ years ago a local brewery<sup>4</sup> removed the permanent ramp to their visitors centre and replaced it with an unreliable wheelchair lift. At the time, they were very embarrassed about the difficulties posed by their lift. They explained that the lift company, who had fitted an indoor lift outside, had misled them. The master brewer kept me informed, sorted the lift and invited me for a meal in the visitor centre to make amends. We were all happy with this resolution.
34. This was at distinct odds to their reaction to my experience of more recent reliability problems. They flat denied using the lift for goods, even though their own staff told my parents and me that they had done so. They accused me of failing to operate the lift properly. They attempted to make a minimal offer on condition that I never took legal action against them for anything in the future (not just disability discrimination), never criticised them for anything ever again and took down the YouTube video by which I had documented the problem with the lift.
35. They attempted to use my legal action to enforce my rights as a mechanism to gag me.

### **Example: a hotel chain**

36. Chris Fry referred to this example in his oral evidence to the Committee on 26<sup>th</sup> October (Q29.)
37. There are very few hotels with tracking hoists and adjoining carer's rooms in the UK. This is an indicator of the statutory regime's failure to ensure accessibility of the built environment.
38. Some years ago, I had a dispute with one of (*to my knowledge*) only two hotel operators in London to have such facilities. This provider<sup>5</sup> requires people wishing to book rooms with tracking hoists or adjoining rooms to do so by phone, because they do not have the facility to book these on their website. Their telephonists only

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<sup>4</sup> [Black Sheep Brewery](#)

<sup>5</sup> [IHG Limited / Holiday Inn](#)

proactively offer their most expensive “fully flexible” hotel rates (*currently £214.90 per night instead of the £164.90 advanced rate online*). Staff are not aware of the provider’s policy to reduce room rates for disabled people who need accommodation for carers.

39. I challenged their booking procedure and reached agreement with them. The terms of the agreement are confidential, but the pre-amble is not - it is an open agreement that they would train their staff to ensure they offer all rates and appropriate discounts to disabled callers.
40. They have not complied with this agreement. I therefore took them to Court. Sadly, however, I made a drafting error. I identified the “*provision, criterion or practice*” (PCP) as their policy for ensuring they offered lower prices, whereas I should have described it as a failure to maintain a reasonable adjustment to the PCP of a hypothetical pricing policy without such a reduction. (*I consider this shows the complexity of the law and the difficulty that unrepresented, untrained Litigants in Person face when attempting to enforce their rights under the Act.*)
41. The provider’s legal representative got my case struck out on the basis that I had no significant chance of success because I had misidentified the PCP. They applied for the whole case, all papers and the judgment to be made “private” because I had disclosed the confidentiality clause of the original agreement – even though they were clear that my disclosure of the confidentiality clause itself was my only breach of the confidentiality clause, and that all my other quotes were from the (*open*) preamble. They applied for costs of £14,000 against me because the Court had not allocated the case to a track when the defendant made the application, even though the Court indicated it intended to allocate the case to the small claims track (*in which legal costs are non-recoverable.*) They then asked the Judge to use a specific phrase in his judgment in order to start the process of obtaining a civil restraint order against me.
42. The Judge refused to comply. He made only part of the case confidential, reduced the costs awarded against me to £7,100 and refused to utilise the phrase required to start the process of applying for a civil restraint order against me, as he did not believe that my claim was “*totally without merit*”.
43. The impact is still significant: I can ill-afford the costs. Most awards for disability discrimination are between £1,000 and £2,000, so the costs risk is out of all proportion to the potential damages. Like most disabled people, I have diminished income and resources compared to the average population.
44. I am also affronted at the attempt to silence and restrain me from bringing discrimination cases. I am a repeat litigant because I use the Act as a tool to achieve positive change for disabled people (*as it was intended.*) There are few disabled people able to enforce their legal rights. If I am prevented from doing so, there will be even fewer.

45. Service providers are using disabled claimants' vulnerability, costs risk and lack of training as a weapon to avoid enforcement action, and to gag them.
46. In the absence of qualified one-way cost shifting, the risk of adverse costs protection forms a significant barrier to enforcement of disabled peoples' rights.

### **The advent of the Specialist Defendant Representative**

47. As the Equality Act committee noted, there are few disability discrimination goods and services cases (*because of the significant barriers faced by would-be disabled litigants*). Over the past year, I have noticed the same legal counsel and solicitors defending against both represented and unrepresented disabled litigants in a significant number of these cases. There appear to be few similarities between the circumstances and defendants of cases represented by the same counsel, other than that they are all disability discrimination cases.
48. A small number of legal personnel appear to be developing a strategic specialism in defending corporate and statutory organisations against individual claimants bringing equality discrimination claims.<sup>6</sup>
49. **The advent of specialist defendant representatives is worsening the already significant disparity between service providers' and disabled claimants' access to justice.**
50. **When said representatives employ and hone cost threats and other below-the-belt tactics the chilling effect is notable.**

### **The dearth of accessible housing and appropriate social care provision**

51. Many are surprised that I, as a relatively empowered disabled person, live in a residential care home, despite the restrictions that such accommodation entails and the documented institutional abuse of me by the organisation that runs the home<sup>7</sup>.
52. My reasons are not straightforward. The home is much better than many, more institutional ones (*the staff are great, and the facilities and location are good*). Welfare and social care provision in the community is in crisis, as revealed by today's UNCRPD report.<sup>8</sup> Consistent reports of disabled people being left waiting for carers at set times of the day, being let down by carers, and experiencing isolation in one's own home, worry me. The grass isn't always greener on the other side (*or safer*.)

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<sup>6</sup> [An example at Matrix chambers](#). This barrister acted for the corporation or the Government in all cases cited over recent years. This barrister represented the hotel chain in my example above.

<sup>7</sup> A multi-agency safeguarding investigation found [Leonard Cheshire Disability](#) guilty of "institutional, specifically psychological, abuse from a range of senior management over a period of years" that has caused me "real psychological harm", and upheld this finding after reinvestigation following Leonard Cheshire Disability's threat of judicial review.

<sup>8</sup> [Report of the Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland carried out by the United Nations Committee on the Rights of Persons with Disabilities under article 6 of the Optional Protocol to the Convention](#)

53. Another reason, however, is the lack of appropriate accessible housing stock, and in particular the lack of appropriate accessible social housing stock.
54. I know adults who are stuck in inaccessible houses, being carried up and down stairs by their aged parents, waiting for years for more appropriate accommodation because there simply is not enough suitable accessible social housing stock.
55. In the care home in which I live, we get people who stay here "*temporarily*" whilst their houses are adapted (*if adaptable*) or whilst appropriate social housing is found. They are invariably here longer than expected because the process of applying for disabled facilities grants is slow and councils' resources are being stretched ever thinner.
56. Once one is in residential care, one is classed as "*adequately housed*". Compared to many people living in the community in inappropriate accommodation and in penury, I am lucky. However if I were to want to move into a more independent situation, I would not be able to. I think I should have that choice. Other disabled people who exist (I hesitate to say "live") in more institutional homes need that choice even more.
57. When I first became significantly disabled around the year 2000, there were new, alternative schemes for "extra care" housing and social care. A local care home had been converted into a street of accessible bungalows with a central care base. Such was revolutionary, and much in demand, with long waiting lists.
58. I am not aware of any similar new schemes in the last 15 years.
59. **People are stuck in disabling, institutional environments because of the lack of accessible social housing and the limited funding for disabled facilities grants.**
60. **Councils, ALMOs and housing associations have lost the impetus to create progressive and hopeful alternative social care provision schemes.**

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