

## **Involvement and the Disability Equality Duty**

**Briefing for Central Government  
Departments on the Disability  
Equality Duty and Public  
Consultation and Involvement**



# 1. Introduction

This briefing is the first in the series of non-statutory briefings for central government departments on the Disability Equality Duty (DED).

This specific briefing is intended for central government leads on the development of the Disability Equality Scheme (DES) as required under the specific duties set out in the regulations pertaining to the Disability Discrimination Act (DDA) 2005.

It sets out the Disability Rights Commission's (DRC) understanding of the relationship between the issue of 'Public Consultation' and the statutory requirement for 'Involvement of Disabled People' in the production of the DES, within the legal timetable required by the DDA (2005).

This bulletin discusses the background rationale for involvement, and its significance in the development of the DES in some detail. Below are a number of summarised, over-arching points to consider at the outset.

- 'Involvement' of disabled people in this context is of a higher order than 'consultation'.
- Public bodies are required to actively involve disabled people, in significant and demonstrable ways, who may have an interest in the way an authority carries out its functions in the authority's policies, and in the outcomes of the DES as a whole.
- The involvement of disabled people should be influential, particularly in shaping the action plan/s and developing the criteria used for assessing the impact of policies and practices on disabled people.
- The nature and effectiveness of the involvement of disabled people (beyond consultation) must be reported as part of the DES.
- Involvement of disabled people, beyond the statutory requirement, will be of continuing and added value to policy development and service delivery.

- **Government departments should not curtail or sacrifice the active involvement of disabled people in the preparation of their DES by attempting to meet a formal three month public consultation period.**
- **Quality involvement will be of greater significance than formal public consultation in producing a high quality DES. This will enable departments to improve their performance on disability equality, thereby creating measurable improvements in the quality of life for disabled people.**

## 2. Involvement

In the DRC's overview guidance on the disability equality duty, public authorities are encouraged to approach their work on delivering the duty as a 'journey', with the involvement of disabled people as its first phase.<sup>1</sup> However, significant and transparent involvement should be seen as a continuing essential element of the DES during its development and beyond.

The 'Duty to Promote Disability Equality: Statutory Code of Practice' (the Code) is very clear about the distinction between 'involvement' and 'consultation':

'The specific duties require the 'involvement' of disabled people. 'Involvement' requires a more active engagement of disabled stakeholders than 'consultation'.<sup>2</sup>

In the Prime Minister's Strategy Unit report 'Improving the Life Chances of Disabled People, Chapter 8 (paragraph 8.5) sets out recommendations for government departments for the involvement of disabled people:

'This report has highlighted the importance of involving disabled people and their representative organisations in policy design and delivery. The criteria for reform should, if properly applied, make sure that disabled people contribute at both national and local level to policy development and the delivery of all provisions affecting them. The public sector duty will require a significant increase in the involvement of disabled people within key public sector bodies.'

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<sup>1</sup> 'Doing the duty: An overview of the Disability Equality Duty for the Public Sector' (February 2006) The Disability Rights Commission

[http://www.drc.org.uk/employers\\_and\\_service\\_provider/disability\\_equality\\_duty/getting\\_started.aspx](http://www.drc.org.uk/employers_and_service_provider/disability_equality_duty/getting_started.aspx)

<sup>2</sup> Para 3.13, Page 57 The Duty to Promote Disability Equality, Statutory Code of Practice England and Wales. Disability Rights Commission (2005)

‘User involvement protocols should be drawn up and implemented at all levels. This would provide a direct signal to disabled people that their contribution is essential to delivering the new strategy, would overcome a degree of current uncertainty about inclusion of disabled people in policy development, and would provide an example for similar arrangements associated with delivery of services. There will always be a risk that the organisations wish to make faster progress than proves to be possible. But it would formalise current tentative arrangements and bring invaluable input.’

#### Recommendation 4.2:

‘By 2006, user involvement protocols for both commissioning and monitoring services should be developed by public bodies, in consultation with disabled people. Local authorities should develop a protocol for the whole authority, not one per individual function. The development and use of the protocols will be part of existing service improvement initiatives. Registration and inspection bodies will be asked to further develop their involvement of service users, and to use standards relating to user involvement when registering and inspecting services.’

This action, if conducted as part of the initial work on delivering the disability equality general duty, and on the development of the DES, will bring both immediate and longer term benefits for Government departments and their associates.

The DRC Statutory Code of Practice identifies the involvement of disabled people as an essential element in delivering the specific duties described in the Code.

The specific duties expressly require the involvement of disabled people in the development of the DES. Even those authorities not subject to these duties are likely to find that the involvement of disabled people is key to compliance with the general duty. Public authorities will be unable to identify and prioritise equality initiatives effectively unless disabled people and, where appropriate, disabled children and their parents, have been involved in that identification and prioritisation.

The regulations specifically require the involvement of disabled people in the development of the Scheme. However, the involvement of disabled people in the implementation of the various aspects of the Scheme (such as conducting impact assessments and gathering evidence) will also be critical to the successful implementation of the duty. For example, involving disabled people in monitoring the success of initiatives throughout the duration of the DES will assist with evaluation, and will be critical when the time comes to review and revise the Scheme.

It is felt imperative, given the general recommendation in the 'Improving Life Chances Of Disabled People' report, and the statutory requirements for the involvement of disabled people in the development of DES, that the development of involvement strategies, protocols and processes, alongside appropriate financial and communication arrangements to support them, should be an absolute priority, above and beyond any perceived need for formal public consultation.<sup>3</sup>

The National Audit Office Report, 'Delivering Public Services to a Diverse Society 2004' (The NAO report) offers the following guidance on engaging diverse stakeholders in the context of identifying their different service delivery needs:

'Long-term, supported engagement with stakeholders is required to help government bodies identify differing service delivery needs that may exist across diverse customer groups, and develop the most appropriate ways of delivering these services.'

It advises public authorities to:

'Engage with stakeholders at an early stage, but after sufficient preparation. This means that bodies are prepared and equipped to address all perspectives at an early stage, leading to positive outcomes for all parties. Sustain the links established with stakeholders during the design and development of services throughout their implementation and review.'

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<sup>3</sup> Improving Life Chances of Disabled People: Jan 2005, Prime Minister's Strategy Unit.

The NAO report also recommends that budgets for engaging with disabled people must take realistic account of the often significant costs associated with ongoing communication and collaboration.

The duty requires public authorities to involve those disabled people who appear to have an interest in the way in which an authority carries out its functions. This may include former, current and potential service users, staff and the wider community. It is important to consider the full diversity of disabled people – in terms of the type of impairment, as well as other dimensions such as ethnicity, age, gender, sexual orientation and religion or belief.

These are new and demanding requirements (which will be discussed in greater detail in two separate guidance documents on involvement). They present new and exciting challenges to public bodies across their policy remit in the production and evaluation of the effectiveness of their DES.

Arrangements for the involvement of disabled people in the development of the DES is thus a pressing priority for all public bodies, particularly for those whose relative size will have an impact upon the proportionality element of their responsibilities. For government departments this is likely to mean it is felt reasonable for adequate resources to be made available to facilitate the involvement of disabled people and representative organisations at a significant level and in demonstrable ways.

Departments should identify existing mechanisms for involvement / consultation and review their effectiveness. In gathering information on their current performance on disability equality, departments should take the opportunity to identify existing sources of involvement and consultation by and with disabled people, for example, contact databases and external reference groups. They should also consult with disabled staff networks and workplace trade union disability structures to identify further potential sources of involvement. National disabled people's organisations and organisations representing their interests may have contact with groups and individuals with an interest in a department's policy area.

Departments should identify areas in which policy impact is significant but where involvement is not yet apparent. They should then take immediate steps to remedy this gap.

When involving disabled people and their organisations, it will be important to build capacity within the involvement cohort by providing clear and concise information about:

- the department's expectations
- the scope of the involvement
- its purpose and context
- accessible and clearly presented information on key priorities, the policies, processes or specific documents on which involvement is sought
- the commitment expected
- the benefits for the department
- the arrangements which will be put in place to support and facilitate involvement
- the arrangements for informing disabled people how their involvement has been effective and influential.

In order to optimise effectiveness, it is strongly recommended that those working to involve disabled people should receive disability equality training from disabled people. Consideration should also be given to extending this training to the involved parties, particularly where individuals have no history of involvement or representation. This training should include specific content on the Disability Equality Duty.

In addition, government departments are strongly advised to seek opportunities for involvement beyond the process and content of the DES itself, and the development of criteria for impact assessment. Disabled people's priorities will need to be considered in the derivation of the action plan, and their involvement in conducting impact assessments is likely to ensure that these assessments reflect both the priorities and unique perspective of disabled people.

## Example:

A government department is considering its options in relation to enabling remote working and conducts a disability impact assessment on both the Remote Working Policy, and the contract specification, which has been developed for the procurement of the required technical infrastructure to support it. The policy makes general reference to the need for 'remote access solutions to be available to all on the basis of need'. However, involvement by the Disabled Staff Network reveals that it does not make any specific reference to a requirement that the access needs of disabled users should be met, or to the support arrangements which would need to be put in place to support this. As a result, no such requirements have been built into the tender specification. The Disabled Staff Network is able to identify both the risks of litigation and to suggest amendments to both the policy and the tender specification which will mitigate against such a risk.

### **3. Public consultation**

It is customary for government departments to put significant public documents (such as the Race Equality Scheme) out for public consultation in accordance with government guidelines produced by the Cabinet office. However, given the statutory requirement for direct involvement, the timescales involved, and the fact that the Disability Discrimination Act regulations (The Disability Discrimination (Public Authorities)(Statutory Duties) Regulations 2005 SI No. 2966 ) do not specify the need for such consultation, the view of the DRC, and the Office for Disability Issues is that for the development of the first DES, priority should be given to the development of an effective involvement strategy and departmental involvement protocols as recommended in the previously mentioned Prime Minister's Strategy Unit Report Improving the Life Chances of Disabled People (2005).

Wider formal public consultation timetables should not jeopardise the ability of departments to publish a DES by the 4 December 2006. The DRC is mindful of the significant lead-in time required for Board and Ministerial approval, and for multi-format publication of the final scheme and action plan, for which departments will be legally accountable.

This must be done with the involvement of disabled people and their organisations. The DES will need to account for their policy priorities, the identification of which should be achieved both by reviewing any existing research data available to and within departments, and by direct activity – in the form of focus groups or similar methodologies, and by using existing consultation and involvement mechanisms, with disabled people themselves. The published scheme should also contain a statement about how the involvement of disabled people has been significant in the development of the DES, and if not, why this is the case.

It is also considered important to ensure that disabled people are involved in the development of the criteria which will be used in disability impact assessments.

All these are likely to be resource intensive, and time consuming processes, and are clearly identified in the statutory Code of Practice. The regulations can be found at Appendix C of the Code.

**Your attention is also drawn to supplementary guidance published by the DRC on evidence gathering and involvement. The first of the guidance documents on involvement targets disabled people, whilst the second is aimed specifically at public bodies. Both of these documents are now available to download from the DRC website [www.dotheduty.org](http://www.dotheduty.org).**

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## **Disclaimer**

**The information in this bulletin is based on the law but its main purpose is to help authorities to comply with and make the most of the Disability Equality Duty. The Statutory Code of Practice on the Disability Equality Duty provides further detail of the legislation.**