
**SUBMISSIONS ON BEHALF OF DISABLED PEOPLE’S ORGANISATIONS:
INCLUSION SCOTLAND AND DISABILITY RIGHTS UK
Preliminary Hearing – 26 October 2023**

Further to the Note for the Hearing prepared by Counsel to the Inquiry dated 12 October 2023 (hereafter ‘CTI Note’) the following addresses [I] Disabled People’s Organisations [II] Scope [III] Witnesses and [IV] Reasonable Adjustments.

I: DISABLED PEOPLE’S ORGANISATIONS¹

- 1.1. CORE PARTICIPANTS: Each of the above are organisations run by and for Disabled people (‘DPO’). They are to be distinguished from charities that represent Disabled people, however well, rather than enabling them to represent themselves.²
- 1.2. SOCIAL MODEL: The DPO’s approach is informed by the ‘Social Model’, that essential injustices of being disabled are the product of socially constructed barriers and attitudes. Of considerable significance to the DPO in this Inquiry is the way in which ‘vulnerability’ and ‘resilience’ operated as core policy discourses without sufficiently acknowledging their socially and economically determined dimensions.
- 1.3. ‘AFTERTHOUGHT’ SYNDROME: The primary issue with the fusion of science and government that constructed the Covid response – especially as regards political and administrative decision making – is that the evidence from Module 2 is that none of it contained Disability specialists, service providers, subject-matter experts or end users.³ The issue is particularly pronounced with Disabled people, not only because of their under representation and lack of empowerment, but also with the risk of unconscious ableism in decision making. The treatment of Disabled people as an “afterthought” was a syndrome identified by a House of Lords Select Committee reviewing the impact of the Equality Act 2010 prior to the

¹ For an overview of the DPO approach to the issues arising in the Inquiry see [DPO M2 Opening Submission 26.09.23 §§1.1-1.11 pp 1-7](#)

² [General comment No. 7 \(2018\) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, CRPD/C/GC/7 §§11, 13, 15, 27 and 78 {INQ000279951/3}](#)

³ [DPO M2 Opening Submission 26.09.23 p 17-18 §§3.5 \[no expertise\] and 3.7 \[no engagement\]](#); and see recognition of the issue in general, but not specifically as regards Disabled people, by SAGE sub-group witnesses, e.g. Hayward {INQ000267868/9 §§4.9, 4.12, 4.14 and pp §§9.6-9-9.10}{M2T10/184/1-187/5}

pandemic.⁴ It is likely to characterise the evidence of all Modules, including Module 2A. A significant question that the DPO have for Module 2A is whether Scotland developed more sophisticated structures for civil society engagement, including with Disabled people. That question carries with it an attendant set of questions about whether there is an ethos and understanding of how such engagement can effectively work.

1.4. HUMAN RIGHTS AS METHOD AS WELL AS OBLIGATIONS: The United Nations Convention on the Rights of the Persons with Disabilities ('UNCRPD')⁵ is commended to the Inquiry not simply as including obligations that are binding on the UK under international law and of relevance to the scope of ECHR rights. They provide a set of tools for understanding the lack of protection that Disabled people endured during the pandemic and how to positively avoid such exposure in the future. The UN Committee report of October 2017 highlighted non-compliance on these matters and its observations would have been known to the UK at the outset of the pandemic. To that end we particularly draw attention to the relevance of Art. 4(3) (consultation), Art. 11 (emergency planning) and Art. 31 (data collection).⁶ The human rights method, we submit, should be important to any recommendations that come under consideration by the Inquiry. It will also be the case of the DPO that the UK breached these treaty obligations. Nothing in section 2 of the Inquiries Act 2005 precludes such a conclusion from the Chair. The pertinent question for Module 2A and the associated four nation modules will be to ascertain whether the practice, ethos and policies of human rights compliance in Scotland, Wales and Northern Ireland, are different, better, or the same.⁷

1.5. CO-PRODUCTION AND CO-DESIGN: Domestic administrative law does not contain a fundamental right to effective engagement and participation in policy formation for those who will be impacted by its consequences and there is no nationwide statutory right to this⁸, but the UNCRPD obligates States parties under Art. 4(3) to "*closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations*".⁹ An approach to government that embeds its potentially Disabled people in the co-production and co-design of policy that affects them is a core

⁴ [House of Lords - The Equality Act 2010: the impact on disabled people - Select Committee on the Equality Act 2010 and Disability \(parliament.uk\)](#) Report of Session 2015-16 (March 2016) HL Ch. 1 §16

⁵ [DPO M2 Opening Submission 26.09.23 p 7-13 §§2.1 and 2.12](#)

⁶ CPRPD/C/GBR/CO/1 (3.10. 17){INQ000182691} §§10-11(Art 4(3)) §§28-29 (Art 11) and §§64-65 (Art 31)

⁷ For introductory analysis of the issue in Scotland, see [DPO M2A PH Submission 14.03.23 pp 3-6 §§2.1-2.8](#)

⁸ See, recently, *SSDWP v Eveleigh* [2023] EWCA Civ 810 Cf. [Part 3 of the Community Empowerment \(Scotland\) Act 2015](#) which affords some statutory rights in Scotland

⁹ General Comment (No. 7), Fn. 2 above, §§3-5, 11, 13, 15, 18-20, 27, 42

recommendation of the World Health Organisation¹⁰ and a key part of the Sendai Framework on Disaster Risk Reduction,¹¹ and a practice belatedly adopted as policy in the Government’s National Disability Strategy (July 2021).¹² The evidence before Module 2 is that this did not happen in practice with the UK Government.¹³ Moreover the recognition that engagement is a mandated human right is essentially non-existent.¹⁴ The question for Module 2A, will be whether the situation was any different in Scotland in principle, or in practice.¹⁵

II: SCOPE

- 2.1. GENERAL: The DPO welcome the Revised List of Issues (‘LOI’) for Module 2A and in particular §1(a)(vi) (“What structures and core-decision making processes did the Scottish Government have and use to consult those it identified as vulnerable and at-risk groups? How effective were they?”) read with §1(a)(x) (“Was there appropriate access to and use of advice from bodies external to these governmental structures?”). Thereafter their focus will be especially on §§4(c)(vii), 5, 6(a)(ii), 7(a)(viii) and how those issues question how and when certain at-risk groups were characterised as vulnerable, including the data recognition of their position, and with what adverse consequences. For their part the DPO advance the matters contained above as principles and methodology that the Inquiry should adopt as part of its preparation. They assist in ensuring that Disabled people’s issues become intrinsic and mainstream to all aspects of the module. Mainstreaming a Disability perspective is a proper approach in its own right, but it also ensures that the process of enquiry does not repeat the oversights that arguably befell its subject matter and are essential to correcting it in any recommendation for change.
- 2.2. ENGAGEMENT: The emerging evidence from Module 1 and 2 is that both the ethos and structures to enable engagement with at-risk and marginalised parts of society and their representative groups is crucial. In a ‘whole-society’ emergency, Central Government simply cannot plan or thereafter act alone. It must create resilient collaborations. This is not new conceptually in so far as the civil contingency framework envisages pre-planning to

¹⁰ [WHO World Disability Report](#) (2011 Rec. 4 p. 265)

¹¹ [The Sendai Framework for Disaster Risk Reduction 2015-2030](#) §§7, 19(d), 32, 35 and 36(a)(iii)

¹² {INQ000089722/19}

¹³ See fn. 3 above and Kamran Mallick, CEO of Disability Rights UK {INQ000280035/8-9 §§24-25 and pp 13-17 §§42-50 and pp 26 §§86-89}

¹⁴ As to the description of how engagement might work better, see Mallick {M2/T5/64/15-65/16}

¹⁵ For introductory analysis of the issue in Scotland, see [DPO M2A PH Submission 14.03.23 p.7 §§3.2-3.3](#)

involve the ‘voluntary sector’.¹⁶ The general consensus is that the pre-pandemic situation was ineffective.¹⁷ Without pre-planning, it is difficult to plan during an emergency from a standing start. The evidence in Module 2 suggests that it was particularly difficult to do that with our current political and administrative structures and culture. The question for Module 2A is whether the situation was structurally and culturally better in Scotland. The effect of not planning and thereafter not effectively engaging was generally devastating for Disabled people.

2.3. MACHINERY OF GOVERNMENT: Similarly, there is evidence in Module 2 that the internal ministerial structures of the UK Government did not produce effective oversight and leadership of a range of well foreshadowed health equality issues, and especially so with regard to Disabled people. That situation arose partly through there being no lead Secretary of State, and the UK disability ministerial portfolio residing in the Department of Work and Pensions. The relevant Cabinet Secretariat is a vehicle of policy not operations.¹⁸ The DPO wish for equivalent structures and roles to be examined in Module 2A in order to assist the Chair in any consideration of whether better structures can be put in place in the future.

III: WITNESSES

3.1. GENERAL: Further to the Inquiry’s updates and helpful outline of which witnesses have been approached to provide Rule 9 Statements, the DPO consider that the equivalent Ministerial office holders with portfolios dealing with the elderly and other equality issues should be sought, as they have been obtained in relation to the UK Government.

3.1.1. CHRISTINA MCKELVIE: Minister for Equalities and Older People (2018-23) whose portfolio included Disabled people

3.1.2. MAREE TODD: Minister for Children & Young people (2017 – 2021) and Minister for Public Health, Women’s Health and Sport (2021-23)

3.1.3. CLARE HAUGHEY: Minister for Mental Health (2018-21)

3.2. DPO WITNESS: Inclusion Scotland had a meeting with the legal team for Module 2A in which there was discussion about obtaining a DPO statement that could add a Scotland perspective to the evidence already supplied to the Inquiry by Kamran Mallick of Disability

¹⁶ Cf. First responders under the CCA are only required to ‘have regard’ to the Voluntary and Community Sector: see Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 (‘CCR 2005’) Reg 23

¹⁷ [DPO M2 Opening Submission 26.09.23 p. 14 §3.2](#)

¹⁸ [DPO M2 Opening Submission 26.09.23 p 16 §§3.4](#)

Rights UK, and especially with regard to specific matters that will assist the Inquiry to evolve its understanding on methods and structures for more effective engagement, adequate planning and more useful and disaggregated data collection. The DPO have identified a proposed witness and will write to the Inquiry separately about that.

IV: REASONABLE ADJUSTMENTS

- 4.1. EVERY STORY MATTERS: The DPO recognise that Every Story Matters ('ESM') has the potential to be of great benefit to the Inquiry's outcome and of lasting benefit to society. It would be of considerable value for Disabled people to be able to tell their stories and for the DPO to be involved in supporting that. Previous submissions addressed how the process can be more inclusive and what reasonable adjustments would be required.¹⁹ The DPO acknowledge that developments are being made, especially with regard to enabling BSL users to provide their accounts.
- 4.2. BRITISH SIGN LANGUAGE: The DPO have previously requested that the YouTube videos of the hearings should include BSL.²⁰ That request is still under consideration. The failure to provide BSL services during the Covid press conferences is now regretted by a range of witnesses, including the previous Prime Minister.²¹ For reasons explained in *R (Rowley) v Minister for the Cabinet Office* [2021] EWHC 2108 (Admin) §§5 and 15, there is a sizeable section of the D/deaf²² population who do not necessarily read subtitles or transcripts and/or identify with them as a mode of communication. The present position is that a vast part of the d/Deaf community are therefore not able to enjoy their basic means of following the hearings. That is a disquieting gap in the coverage of all public inquiries, including this one, where so much emphasis is otherwise put on ensuring public access.

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19 OCTOBER 2023

¹⁹ [DPO M4 PH Submission 05.09.23 pp 5-6 §§3.2-4](#)

²⁰ [DPO M2A PH Submission 14.03.23 p. 11 §5.4](#) and [M2 PH 01.03.23 {T/116/17-22}](#)

²¹ Johnson {INQ000255836/199/§686}

²² See Scottish BSL National Plan 2017-2023. The capital D 'Deaf' is used as a cultural label and refers to people who are profoundly deaf, whose first or only language is sign language and are part of a cultural and linguistic minority known as the Deaf community".