

Our Ref: DRH/KT/121200

23 November, 2009

The Rt Hon Harriet Harman MP  
Minister for Women and Equality  
House of Commons  
London SW1A 0AA

Dear Minister

RE: DISABILITY DISCRIMINATION ACT

I am directed by my Council to draw your attention to the following resolution that was passed unanimously by the Council at its meeting on 19 November 2009.

"This Council is concerned that the obligations placed upon organisations by the Disability Discrimination Act 1995 are in many instances not being fulfilled. This arises, in the Council's opinion, from ineffective enforcement measures whereby the onus is placed upon a disabled person to bring civil proceedings in a county court.

The Council calls for a fundamental review of the effectiveness of the legislation and particularly for more robust enforcement measures that do not place the onus upon disabled persons to initiate court action. The Council suggests that disabled persons who believe an organisation has not taken reasonable steps to remove discrimination should be able to register a complaint with a competent body such as the Equality and Human Rights Commission and if that body, having investigated the complaint, finds an organisation has failed to meet its statutory obligations it should be under a duty to bring a court action to secure its compliance."

My Council would appreciate your response to its concerns and its call for a review of the Disability Discrimination Act.

I have sent a copy of this letter to Jonathan Shaw MP, Minister of State (Disabled People), Mark Harper MP, Shadow Minister for Disabled People and the Rt Hon Sir John Stanley MP, one of two MPs whose constituencies cover parts of the Borough, the other being Jonathan Shaw.

Yours sincerely



CHIEF EXECUTIVE



HOUSE OF COMMONS

LONDON SW1A 0AA

30 November 2009

Mr David Hughes  
Chief Executive  
Tonbridge and Malling Borough Council  
Gibson Building, Gibson Drive  
Kings Hill, West Malling  
Kent, ME19 4LZ

CHIEF EXECUTIVE	
PASS TO <b>CE</b>	FOR INF FOR ACT!
0 2 <b>WC</b> 2009	
COP ACK	T TO _____ YES.

*Dear Mr Hughes*

**Disability Discrimination Act**

Many thanks for your letter of November 23 together with a copy of the letter of the same date that you wrote on behalf of the Tonbridge and Malling Borough Council to the Minister for Women and Equality, Harriet Harman.

I am very much in agreement with the central point made in the Borough Council's resolution. With the drastic cut-backs that the Government has made in legal aid particularly in civil cases, to say to a disabled person that they can "bring civil proceedings in a County Court" constitutes erecting a financial barrier that is impossible to surmount other than by the very rich.

I have now written myself to the Minister for Women and Equality in support of the Borough Council's resolution and will be obtaining a copy of the reply made to your letter to her.

I should be grateful if you could inform the members of the Borough Council of my reply.

*Yours sincerely*  
*John Stanley*



From the Minister of State  
for Work and Pensions

POS(8)10977/239

Rt Hon Sir John Stanley MP

**DWP** Department for  
Work and Pensions

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7<sup>th</sup> January 2010

*Dear John*

As you may know, your letter of 30 November 2009 to Rt Hon Harriet Harman QC MP on behalf of Mr David Hughes, Chief Executive of the Tonbridge and Malling Borough Council, concerning issues around enforcement of the Disability Discrimination Act, has been passed to this Department.

I regret that I cannot comment on individual decisions taken, or resolutions made, by a particular organisation or local authority, or the basis on which those decisions may have been taken. I can, however, provide some information about enforcement of the Disability Discrimination Act 1995.

It may help if I explain that enforcement of the Disability Discrimination Act is by the individual, which is consistent with other equality legislation, because the act of discrimination is against the individual. Furthermore the circumstances, including what might be a reasonable adjustment for a disabled person, will vary according to each specific case.

We do not consider it appropriate for a single body, such as an inspectorate, to enforce the Disability Discrimination Act because the Act does not establish or require an objective standard or level of adjustment against which compliance with the Act can be measured. Instead it requires the duty holder to make such adjustments as are reasonable in the circumstances of the individual case.

An inspectorate, therefore, would not be able to determine what type of adjustment it might be reasonable for an employer or service provider to make for a particular disabled person. It is more appropriate for this decision to be made by a tribunal, in employment cases, or a court in cases involving access to goods and services. A tribunal or court can consider what adjustment should be made for a particular disabled person and can consider necessary evidence from the employer or service provider to determine what is reasonable.

However, legal action should normally only be required as a last resort.

Before considering this, it is sensible for the person concerned to raise their complaint directly with the service provider to see whether the problem can be resolved satisfactorily.

In recognition that taking legal action can be stressful for disabled people, the Government has put in place a range of measures to assist disabled people to enforce their rights and to seek resolution without the need for formal legal action through the courts or tribunals.

For example, in Great Britain the Equality and Human Rights Commission can provide advice to those who consider that they have been discriminated against. The Commission operates a conciliation service to assist in discrimination claims that involve access to goods, facilities and services.

In addition, under Section 56 of the Disability Discrimination Act, a disabled person can use the 'Questions and Answers' procedures - known as the DL56 procedure. This procedure is one of the ways the law tries to assist claimants in proving discrimination. The process enables disabled people, who feel they have been discriminated against under the Part 3 services, premises and transport provisions of the Act, to request an explanation from a service provider, before a claim is presented to a tribunal.

This process does not represent an application to a court, but a service provider's response, or lack of it, may be taken into consideration by a court if a case is brought. What the service provider says may actually help someone decide whether or not to take legal proceedings through the county courts. A person would, however, still need to bear in mind the time limit for taking a case to court and there is also a time limit for using the Questions Procedure itself.

The development of the Equality Bill, currently before Parliament, provided the opportunity for the Government to review the enforcement provisions of equality legislation, including those related to disability discrimination. For the reasons set out above, we concluded that it remained appropriate for enforcement to be by the individual person who considers that they have been discriminated against. The Bill carries forward provisions to harmonise the DL56 procedure, and the Equality and Human Rights Commission will continue to provide advice in respect of discrimination legislation in the Bill.





**Rt Hon Jim Knight MP**



HOUSE OF COMMONS

LONDON SW1A 0AA

21 January 2010

Mr David Hughes  
Chief Executive  
Tonbridge and Malling Borough Council  
Gibson Building, Gibson Drive  
Kings Hill  
West Malling  
Kent ME19 4LZ

**Disability Discrimination Act**

I am writing further to my letter to you of November 30.

The reply to your letter of November 23 to the Minister for Women and Equality, Harriet Harman, has come back in the shape of this reply of January 7 to myself from the Minister of State for Work and Pensions, Jim Knight. This has probably happened because, as you know, I wrote myself to Harriet Harman in support of the Borough Council's Resolution. My intervention has at least ensured a Ministerial reply to your letter.

I hope that the Minister's reply will be of some help to the Members of the Borough Council – not least in its highlighting of the DL56 procedure.

However, in my view, the basic thrust of the Borough Council's resolution remains entirely valid. The effect of placing the entire onus on the disabled individual to take their case to a tribunal or a court – a court in particular – must mean that a great many disabled people are unable to secure enforcement in their individual cases of the provisions that have been brought into law by Parliament under the Disability Discrimination Act.

I should be grateful if you would inform the members of the Borough Council of the Minister of State's reply and of my comments in this letter.

*Yours sincerely*

CHIEF EXECUTIVE	
PASS TO <b>CE</b>	FOR INFO FOR ACTION
26 JAN 2010	
COPY SENT TO _____ COPY TO BE SENT TO _____	
ACKNOWLEDGED	YES/NO