# InclusionLondon_logo_TAB_strapline**Written evidence to the JCHR on Defending Human Rights: attitudes to enforcement**

February 2018

**1. Introduction**

Inclusion London is a London-wide user-led organisation which promotes equality for London’s Deaf and Disabled people and provides capacity-building support for over 70 Deaf and Disabled People’s Organisations (DDPOs) in London. Through these organisations our reach extends to over 70,000 Disabled Londoners.  There are approximately 1.2 million Disabled people living in London.[[1]](#footnote-1)

We welcome the opportunity to respond to the JCHR inquiry on attitudes to enforcement of human rights. Our Disability Justice Project aims to build the capacity of DDPOs to use the law to fight for Deaf and Disabled people’s rights under the Human Rights Act, Equality Act and Care Act. This submission is based on our experiences of working with DDPOs, individual Deaf and Disabled people and public lawyers to defend human rights.

**2. Access to resources**

The following are some of the key barriers that prevent or discourage Deaf and Disabled people from using the law to defend their human rights:

* + - * Difficulties funding a lawyer to take on a case in an untested field. Furthermore, the current anti-HRA climate has increased practitioners, and the judiciary’s, lean towards the common law. For the last 4-5years practitioners have been seeking creative ways to develop and extend common law obligations to vulnerable individuals, cognisant that it is probably only a matter of time before the HRA is repealed.
* Lawyers find it difficult to get funding for human rights cases. The Equality and Human Rights Commission seems only to fund human rights cases when there is a link a breach of equality legislation.
* The post April 2013 costs regime for civil litigation means that even when costs have been reasonably or necessarily incurred they can be disallowed if they are disproportionate. This has particularly impacted small and medium sized claims. As we discussed, the principle for remedy in HRA claims is ‘just satisfaction’ rather than restitution, and damages awards are very low in comparison to common law claims. It is very unusual to find HRA only claims that would attract high levels of damages, whilst such claims can be (and often are) relatively expensive to bring. This means that firms in private practice are likely to limit the number of such claims they take on as they are vulnerable to reduction at costs assessment stages on proportionality grounds.
* The compensation awarded by courts does not pay for the lawyers’ costs: if a person with legal aid wins their cases, the court will award costs against the losing party but only small portion of costs such as £40,000 rather than the £100,000 are awarded, so the compensation does not pay the actual costs incurred by the law company. This inhibits lawyers taken on human rights cases. In one example the mother of person with learning difficulties suspected her son died because he did not get medical treatment. This case could be pursued under the human right to life. However, the lawyers that were approached said the case will not pay us enough so the mother went to Mencap to take it forward.
* The Legal Aid, Sentencing and Punishment of Offenders Act 2012 has had a detrimental impact on access to justice for Deaf and Disabled people. New means testing rules are much stricter than means testing for benefits while rules about capital effectively mean that anyone with equity is unlikely to get legal aid or would have to pay a contribution, which most disabled people cannot afford, for example a disabled person who has inherited a property in which they live but is unable to work and reliant on income from benefits. Irrespective of the stress and upheaval that moving can cause, something that is even more complicated and difficult if you are disabled especially given the chronic shortage of accessible housing, it is unlikely a person could sell their house within the three-month timeframe for taking a judicial review in order to pay for their legal costs. Under the new legal aid rules there are also set sums for deductions to calculate whether or not a person is eligible, some are low, for example housing costs of in the region of £600 per month! Our organisation is aware of numerous cases where individual Deaf and Disabled people have been prohibited from taking legal action to defend their human rights due to being ineligible for legal aid following the changes, instead feeling they have no option but to live in unacceptable, unsustainable conditions that place enormous strain on them and their families.
* Para 22 of Schedule 1 of LASPO means that only ‘significant’ breaches will be funded. The guidance[[2]](#footnote-2) (para 11) says that whether the breach was deliberate and whether the individual has objectively suffered a significant disadvantage should be taken into account. However, we know of funding being refused on the basis that the breach was not deliberate. This was a case involving a disabled individual where the local authority deprived an adult of their liberty which the LAA refused to fund as the local authority believed they were acting in that individual’s best interests and therefore not acting deliberately.

**4. Cultural factors**

* Lack of awareness of human rights and how these apply to Deaf and Disabled people among Deaf and Disabled people. There is a need for more information in accessible formats. In our experience, quoting relevant articles of the Human Rights act can have a positive impact without need for litigation, for example in a social care assessment where proposals by the social worker would have breached an individual’s rights under Article 8 of the HRA, however many Deaf and Disabled people and their advocates are not aware of these rights.
* Lack of awareness of human rights among frontline advisor. If advisors are unsure what human rights are and how they can be used it can be difficult for people to get the right advice and information about how to take a case forward.
* Lack of awareness about human rights among lawyers who sometimes need to be reminded of the human Rights Act and how it can be used.
* Societal attitudes towards disability encourage a view that lower standards apply to Disabled people, for example many of the day to day barriers that disabled people face have become accepted as “the norm” such as being left without access to food or water for hours at a time due to social care cuts. This acts prohibitively against action being pursued on a human rights basis.
* Uncertainty around the future of the Human Rights Act is also presenting a barrier. The public law project now tries to find links with Common law because there is uncertainty as to whether Human Rights Act is still going to be in place.
* Case law such as the Elaine Macdonald case which found against the Disabled claimant act to discourage others from pursuing legal action to defend their human rights.

**5. Recommendations**

For Government to:

* Conduct a full review of the impact of legal aid reforms on access to justice for disabled people in England and Wales by March 2018, including analysis of what people with legal problems do when they cannot access legal aid.
* Take concrete steps to mitigate any adverse impacts identified from legal aid changes, including any indirectly discriminatory effects on disabled people. Inclusion London would recommend that anyone on means tested benefits should get legal aid, that equity in a house where a person lives should not be taken into account and that deductions to calculate expenditure should be based on real expenditure.
* Review the impact of budget reductions and legal aid reforms on the availability of legal advice from non-government organisations in England and Wales, and take action to address the problem of ‘advice deserts’.
* Further review the operation of the telephone gateway service (Civil Legal Advice) in England and Wales with regard to its accessibility and effectiveness, particularly for disabled people and parents of children with special educational needs (SEN), and mitigate any adverse impacts.[[3]](#footnote-3)

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1. <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325491/family-resources-survey-statistics-2012-2013.pdf> (page 64) See also ‘Disability data tables’ at: <https://www.gov.uk/government/statistics/family-resources-survey-financial-year-201516> [↑](#footnote-ref-1)
2. https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/332795/legal-aid-lord-chancellors-guidance.pdf [↑](#footnote-ref-2)
3. Our recommendations agree with those put forward by the Equality and Human Rights Commission: https://www.equalityhumanrights.com/en/publication-download/disability-rights-uk-updated-submission-un-committee-rights-persons [↑](#footnote-ref-3)