

Response by
The British Deaf Association (BDA)
to
The Office for Disability Issues (ODI)

Draft UK Initial Report
On the UN Convention on the Rights of
Persons with Disabilities (UNCRPD)

July 2011

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Introduction

The British Deaf Association (BDA) is a Deaf-led membership organisation. It campaigns for the right of Deaf people to access all areas of society through British Sign Language (BSL) and for the right of deaf children to have a bilingual¹ and bicultural education. We aim to empower Deaf BSL users through a variety of programmes:

- Personal and community advocacy support including training Deaf people to become advocates
- Youth activities including training Deaf people to become youth workers
- BSL teaching including training Deaf people to become BSL tutors

This document is our response to the Draft UK Initial Report on the UN Convention on the Rights of Persons with Disabilities. It is shaped by the experiences of our members and users.

Our members and users tend to define themselves as culturally Deaf with a first or preferred language of BSL, accordingly we will use the capital 'D' to refer to Deaf adults. Because many children grow up without access to other Deaf people, we will use the lowercase 'd' to refer to deaf children.

We are aware that our members and users share many similar experiences to those who have lost their useful hearing in later life, whether this be a gradual process (hard of hearing people) or a sudden process (deafened people). While some people with hearing loss subscribe to our values and indeed are members, we cannot claim to speak for them. This document therefore should not be taken as a response from the whole population of Deaf, deafened and hard of hearing people.

In the document there will be references to 'interpreters'. This denotes someone who has achieved the highest level of training in BSL and has received training in interpreting skills². We also refer to British Sign Language (BSL) which became a recognised language by the UK Government in 2003. BSL is different from English in that it uses grammatical features such as signing space, placement, agreement verbs, facial expressions and movement variations. It also has a different sign structure from that of English which means that it is not possible to have an exact 'word for sign' translation.

Overview

Our view of the document is that it fails on several counts. Firstly, for much of the document our opinion is that the tone is one of perceiving disabled people as recipients of services or support. One instance is the omission of the initiative to train blind people to become magistrates which would have been covered in Article 13 – Access to Justice. Disabled people have every right to dispense justice as well as receive it.

¹ Bilingual education in this context is taken to mean teaching by the use of British Sign Language and English (or one of the indigenous languages e.g. Welsh or Gaelic). Bicultural education involves learning about Deaf identity and culture as well as hearing culture.

² Further information may be got from Signature (formerly CACDP) – see www.signature.org.uk

Secondly, it is our view that the ‘broad brush’ approach towards disability militates against Deaf BSL users. It is the experience of our members and users that this approach almost always fails to address the needs of Deaf people or if they are addressed at all, it is as an afterthought and badly carried out. The UN Convention paid scrupulous care in its Definitions (Article 2) to include signed languages – we do not feel that this is reflected adequately by the ODI draft report.

Thirdly, while we acknowledge that there have been a number of advances in equal rights or human rights made in recent years, our members and users still report a distressingly high incidence of widespread failure on the part of service providers to adequately ensure that Deaf people are fully included in our society. For instance, there are numerous instances of over-zealous officials with negative attitudes making judgements that are in abeyance with the spirit of the legislation. Employers also still discriminate against Deaf people thus acting against the spirit of the law. While we do not dispute that there is “strong anti-discrimination legislation” (Article 5 Page 15) we do contend that the policing and monitoring of the legislation is inadequate.

For instance, the ODI draft report draws attention to the Scottish Roadmap to British Sign Language & Linguistic Access in Scotland (Article 21 – Freedom of expression and opinion, and access to information). This stated: “The Access to Communication in English Report (2006 UKCoD) made it clear there were *“literally hundreds of thousands of deaf people for whom the provision of language and communication access across services is a right which they were denied”*. A further survey by RNID on behalf of the ACE campaign found that:

- 46% of people reported they were unable to interact with their public services “all the time” or “often” due to the lack of language and communication access services available;
- 55% reported that no information was provided about the availability of any language and communication access services;
- 32% reported that their public service provider did not know how to book language and communication access services, while 51% reported that their service providers did not meet the cost of providing language and communication access services.”

We feel that the draft report fails to adequately reflect this dismal reality.

We acknowledge that the UN has given guidance what to include and on the length of the report. However we feel that the overall tone of the draft report is too sanguine about the very real struggles that Deaf people face in common with other disabled groups. It points to a number of encouraging developments in particular areas but there are also omissions. One instance of this is the concept of ‘reasonable adjustment’ which is considered on a ‘case by case’ basis. The draft report fails to acknowledge that the onus is on the individual to challenge any decisions made and that disabled individuals rarely have recourse to large sums of money to pursue their cases. It is certainly the experience of our members and users that faced with an array of CAB volunteers, solicitors, trade union officials, managers and court officials none of whom use BSL or appear to provide ease of access to interpreters, many are simply too intimidated to proceed with their case.

The articles – our responses

This next section sets out our responses to each article. Not all will be responded to. We will respond to those that we feel are most pertinent to our members and users.

Article 7 – Children with disabilities

The draft report makes reference to the following:

- Scotland has a website For Scotland’s Disabled Children
- Wales ‘Disabled Children Matter’
- Northern Ireland Children & Young People’s Ten Year (2006 – 16) Strategy and Action Plan

None of these include BSL. The website has 2 links to the Scottish Deaf Children’s Society.

Article 8 – Awareness raising

- Paragraph 52 states that the ODI website is ‘fully accessible’ but there are no BSL videos to provide summaries of the main points.
- The ODI’s “Inclusive Communications Roadshow website also does not have BSL.

Article 9 – Accessibility - Everyday services.

- We note that there is no mention of Sign Language (or BSL) in the Equality Act. The only mention of a deaf person is in relation to a hearing dog.
- We welcome the Access to Air Travel Code of Practice (Access to transport paragraph 63). However this has no legislative force and our members and users report a number of incidents where this code has not been adhered to.

Article 10 – Right to life

- The ODI draft report focuses on the right “from birth” and in doing so avoids the fact that the Human Fertilisation and Embryology Act 2008 has a section stating: *“Persons or embryos that are known to have a gene, chromosome or mitochondrion abnormality involving a significant risk that a person with the abnormality will have or develop—*
 - *a serious physical or mental disability,*
 - *a serious illness, or*
 - *any other serious medical condition, must not be preferred to those that are not known to have such an abnormality”*
- The view from our members and users is that this is a denial of the right of a Deaf embryo to life. We consider this to be in direct contravention of the UNCRPD which states: *“States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.”*

Article 11 – Situations of risk and humanitarian emergencies

- Our members and users point out that when there is a grave risk, services tend rely on voice announcements which places Deaf people at a disadvantage and perhaps at greater risk. Television broadcasts should also feature a senior politician such as the Prime Minister but with a BSL interpreter as Australian TV did with the flood disaster.

Article 12 – Equal recognition before the law

- Our members and users report that in their view the Mental Capacity Act 2005 fails to make adequate provision for Deaf people. It appears that there is a failure to incorporate proper provision for BSL users with the vast majority of professionals working in this field not Deaf and not possessing a high level of BSL skills. This can lead to unsafe diagnoses. For example, it has been reported that:
 - ¾ of Deaf people in contact with MH services experience difficulties with language development (Mind, 2005 [www.mind.org.uk/Information/Fact sheets](http://www.mind.org.uk/Information/Fact%20sheets)).
 - Co-morbidity is higher with Deaf people with mental health problems. More likely to have learning disabilities and organic syndromes
 - 50 % of Deaf people referred to MH services were diagnosed as experiencing emotional and behavioural problems compared to 5% of the hearing population (Mind, 2005 [www.mind.org.uk/Information/Fact sheets](http://www.mind.org.uk/Information/Fact%20sheets)).

Article 13 – Access to Justice

- We welcome the fact that police have made efforts to improve their understanding of BSL and as a consequence there has been much improved communication. However PACE 1984 Code C Code of Practice for the detention, treatment and questioning of persons by police officers states: “*Chief officers are responsible for making sure appropriate arrangements are in place for provision of suitably qualified interpreters for people who:*
 - *are deaf;*
 - *do not understand English.*”
- It continues: “*Whenever possible, interpreters should be drawn from the National Register of Public Service Interpreters (NRPSI) or the Council for the Advancement of Communication with Deaf People (CACDP) Directory of British Sign Language/English Interpreters.*”³

Our members and users have reported that this provision effectively ensures that Deaf people are locked up (which is in contravention of Article 14 - Liberty and security of the person) while they are waiting for the interpreter to arrive. A hearing person who has been arrested for a similar offence is often charged or cautioned in a much shorter timescale.
- Courts and Tribunal services (paragraphs 83 – 90). We welcome the publication of the Equal Treatment Bench Book. We consider this to be an important document for promoting equal treatment in the courts. It notes that because of the ‘thirteenth person’ ruling, Deaf jurors cannot sit on a jury with an interpreter. Legislation is required to “overcome this obstacle”. It appears that jury service does not come under the provisions of the Equality Act 2010. This is a point that many of our members and users feel angry and bitter about. Justice should not only be received but also dispensed by all sections of the community including Deaf people.
- The Bench Book also gives useful advice about the use of BSL interpreters and the difference between Deaf and hard of hearing people as well as the difference between British Sign Language (BSL) and Signs Supporting English (SSE)⁴.

³ Now known as Signature

⁴ Signs Supporting English refers to a way of communicating with spoken English backed up by signs from British Sign Language. It is not a language unlike BSL which is.

- There is also a 'National Agreement for the Use of Interpreters' which governs criminal court proceedings. Although detailed guidance is not available for Civil and Family Proceedings there is a requirement that states for Deaf and Hearing impaired Litigants: "*Her Majesty's Courts Service will meet the reasonable costs of interpreters for deaf and hearing-impaired litigants for hearings in civil and family proceedings.*" We are disappointed that this is not included in the draft report as we see this as being essential for Deaf people to receive fair and equal treatment in courts or tribunals.
- Prison and probation services (paragraphs 91 – 92). We would dispute the assertion that has been made: "*Disabled prisoners can expect to have the same support as non-disabled prisoners*". The report by HM Inspectorate of Prisons 2009 "*Disabled Prisoners: A short thematic review on the care and support of prisoners with a disability*" found that there were 409 prisoners who were either Deaf or had a hearing loss. Also, it was noted that only 16 out of 82 Disability Liaison Officers said that they had BSL trained staff able to help Deaf prisoners. (HM Inspectorate of Prisons, 2009: 30).

Article 14 – Liberty and security of the person

- The draft report comments that: "No one can be deprived of his or her liberty because he or she is disabled". It has been reported to us that some Deaf prisoners have longer sentences because they fail to meet the requirements for parole, the reason being there is no communication provision in prison education classes.

Article 16 – Freedom from exploitation, violence and abuse

- The BDA welcomes the recording of data of hate crime by police from April 2011 but we note with concern that unless there is a hearing witness to confirm that the hate crime was indeed due to the victim being Deaf, it is unlikely that this can be proved. It has been reported to us by our members and users that they often desist from reporting at police stations because they are aware that there is likely to be communication difficulties or a very long wait for an interpreter.

Article 19 – Living independently and being included in the community

- The draft report states that: "increasing choice and control means giving individual disabled people power and choice on how to live..." Our members and users report that communication support is not included in local authority or health service criteria that govern direct payments or personal health budgets. Deaf people therefore generally have no access to such budgets which restricts their choices. In addition to this, social service departments in some local authorities have stopped employing specialist workers with Deaf people. For those Deaf people who are illiterate, there is a need for communication support workers who can read documents and act as communication facilitators between the Deaf person and service providers. Without personal budgets, this cannot be provided.

Article 21 – Freedom of expression and opinion, and access to information

- We welcome the inclusion of two paragraphs concerning Sign Language in the draft report. We are disappointed that the main thrust appears to be concentrated on interpreters. We also note that while the draft report comments that BSL can be learnt in UK colleges, it does not make it clear that courses

generally require a fee. In our view this hinders widespread learning by all those keen to learn as part of their duties. More pertinently this affects parents who wish to learn so that they can include their deaf child in their family. We see this as a hindrance to family life when parents and deaf children cannot communicate with each other.

- Access to electronic communications (paragraph 165). We are pleased that there is reference to the British Sign Language Broadcasting Trust. However, our members and users complain that they do not have access to as wide a range of broadcasting services as their non-deaf peers as BBC radio services are not accessible but are still part of the general TV licence fee.

Article 22 – Respect for privacy

- Our comments on medical records are included in our response to Article 25 – Health.

Article 23 – Respect for home and the family

- Fertility Treatment (paragraph 174). We have already noted under Article 10 – Right to life, Deaf embryos are not available. Our members and users assert that this is a denial of choice.
- Fostering and adoption (paragraph 175). The draft report states that: “*the same criteria are applied to disabled and non-disabled people who wish to foster or adopt a child*”. Our members and users would dispute this. Their view is that there is widespread general prejudice against Deaf people who would foster or adopt.
- We are also disappointed that the draft report makes no mention of the rights of disabled parents or carers. Both good and bad parenting is to be found in all sections of the population. It has been reported to us that Deaf parents are judged differently from their non-deaf peers when a child is deemed at risk.

Article 24 – Education

- The draft report states: “*Disabled people in the UK have the right to education on an equal basis as non-disabled people.*” There is also the claim that: “*Discrimination against disabled people in education is prohibited in Great Britain by the Equality Act 2010.*”
- Our view is that these are empty words. Governmental statistics suggest that there is a high level of continuing failure amongst deaf children. At primary level the percentage of deaf children achieving Key Stage 2 English is 52% as opposed to around 93% for the general school population. This shortfall continues throughout the school years and is shown by the gap between deaf children achieving 5 or more GCSEs and other children which is 30%. Given that deaf children do not have learning difficulties, the statistics suggest that there is an embedded culture of poor teaching, failure to achieve acceptable linguistic skills and a lack of support for children and parents. For instance it is well documented that many deaf children only receive a few hours of support in the school week while their non-deaf peers get a full week’s schooling.
- These statistics of failure and the views of our members are the reasons why the BDA is campaigning for bilingual and bicultural education. The evidence worldwide is that children who acquire bilingual skills perform better in school. As BSL is likely to be the first language (and easiest to learn) for deaf children, we are promoting this alongside the relevant technological aids such as cochlear

implants or hearing aids because we believe that learning BSL alongside English will ensure improved results at school. We want to see deaf children achieve on the same level as their non-deaf peers.

- Teacher training (paragraph 194). There is no reference to the possibility of disabled or Deaf people working as teachers. There are many Deaf (or disabled) people, who with the right training, could become excellent teachers.
- Further education and skills (paragraph 195). It has been reported to us that provision for communication support for Deaf students is patchy and arbitrary. The draft report paints a picture that does not reflect the reality of many Deaf students.
- Higher education (paragraph 196). Recent years have seen a surge in numbers of Deaf students attending higher education. The BDA welcomes this, partly as an employer and partly because we believe that an educated person is likely to be less dependent on social services. However our information is that there are still considerable difficulties with the provision and management of the right level of interpreters.

Article 25 – Health

- Access to health services (paragraph 204). Recent studies⁵ indicate that many Deaf people experience severe difficulties at all levels. In primary care, the issues are two-fold. Firstly, communicating with the surgery is often problematical and secondly, communicating with the GP or surgery nurse is difficult. The internal communications at most surgeries leaves much to be desired. A major issue is that the numbers of Deaf people in any one catchment area are often too low for surgeries to develop expertise and become centres of excellence. We therefore welcomed the Government's proposal to enable people to choose their GP regardless of distance. This might enable a voluntary organisation to develop a centre of excellence.
- Communication barriers are also prevalent in hospitals with either horror or distressing stories from many of our members and users. Treatment is often delayed with the need to wait for interpreters.

Article 26 – Habilitation and Rehabilitation

- Other than that there is a need of ensuring Deaf people have access to information through BSL, we have no comment to make.

Article 27 – Work and employment

- The Equality Act 2010 has given Deaf people more rights. The UK is a more pleasant place to live in for Deaf people because of the DDA. We welcome these advances in legislation. However, it appears from a Memorandum submitted by the Royal National Institute for Deaf People (RNID) (EDP 39) to the Select Committee on Work and Pensions (August 2003)⁶, this legislation has made little

⁵ National Primary Care Research and Development Centre: Access to Health Services for Deaf People. David Reeves 2004

⁶ According to the Labour Force Survey the employment rate amongst people with hearing impairments is 68%, significantly lower than the employment rate for non-disabled (81%) Smith A, and Twomey B, *Labour market experiences of people with disabilities*, Labour Market Trends, August 2002

impact on the unemployment figures concerning Deaf people. This Select Committee also heard a number of issues relating to employment (or lack of). It was clear that the situation was far from being satisfactory. There is no indication that matters have improved since then.

- While the Access to Work programme has been successful in ensuring that Deaf people are able to receive communication support in the workplace, our members and users report that they feel concerned about losing their current levels of support due to the Coalition Government's austerity measures.

Article 28 – Adequate standard of living and social protection

- Benefits such as the Motability scheme are not open to Deaf people. There is no comparable scheme that enables Deaf people to access interpretation services for private and civil matters such as weddings, attending keep fit classes or visiting relatives that cannot use BSL. Some Deaf people do receive DLA but this is not linked to specific communication issues. Many of our members and users look to Scandinavian countries with envy at their arrangements for provision of interpreters which appear to offer Deaf people the same rights and opportunities as their peers in the wider community.

Article 29 – Participation in political and public life

- The facts are clear. There are no Deaf MPs although there may be a number of MPs who have hearing loss. There has only been one Deaf councillor at any one time in the UK in the past thirty years. (The dates are: Mr B from 1990 to 1994, 2007 to 2011, Mr W. as a parish councillor in 1986 or 1987 and Mr D. from 2000 to 2004.) We made our response to the Government over the Public Office Fund for Disabled People, detailing how one Deaf candidate was forced to spend thousands of pounds from their personal finances to hire interpreters during the General Election. The barriers to achieving participation in civic life are considerable and require ample resources to pay for interpretation. Indeed the Speaker's Conference on Parliamentary Representation - Speaker's Conference (on Parliamentary Representation) 6 Tackling supply-side barriers: Barriers to access for disabled people (2010) noted that "*There is overwhelming evidence that shortage of money and the necessity of additional expenditure to support disabled people through candidacy, make finance a particularly significant barrier to elected office for disabled people. Disabled people should be able to fight for parliamentary seats without having to face the complicated financial barriers that confront them at present. This is not a question of political advantage, but a simple matter of achieving just representation.*"
- Many of our members and users complain that they do not know which party to vote for. The information that they receive is in written format and many cannot understand the issues. This hinders their ability to make informed choices.

Article 30 – Participation in cultural life, recreation, leisure and sport

- Our members and users express considerable dissatisfaction with the present arrangements. These appear to be that cinemas have no obligation to provide captioned films, and when these are shown, viewing times tend to be in work time or late at night.
- We welcome the fact that many of the most prominent theatres in the UK are making an effort to provide captioned performances. However there are no

regulatory standards governing how these should be portrayed and standards vary widely.

- We are disappointed that the draft report makes mention of the Paralympic Games but omits the Deaf Olympics.

Article 31 – Statistics and data collection

- Our view is that the failure to adequately use disaggregated methodology in the collection of statistics effectively bars any real progress in securing human and equal rights. For this reason we welcomed the recent addition of a question on BSL in Census 2011.

Article 32 – International cooperation

- The BDA is a member of the European Union of the Deaf and of the World Federation of the Deaf. We would support any effort by the UK Government in pushing for ratification by developing countries. It is our contention that Deaf people in those countries are denied human rights to a greater degree than that of their non-deaf peers.

Article 33 – National implementation and monitoring

- We welcome the ODI's efforts in developing this further. We would want to see more concentration on disaggregating Deaf, deafened and hard of hearing people from the category of disabled people as we consider that statistics with a broad remit fail to highlight key issues where improvements can be made at relatively low cost.

Conclusion

Our general view is that while there is a failure to adequately catalogue, record and correct abuses of the legal situation, the practice on the ground will continue to disadvantage Deaf people. Our view is that this has not been given adequate credence in the draft report notwithstanding the restrictions on the writing and length of the draft report.

Our overall assessment of the present Government's willingness to move forwards from the declaration of BSL as a recognised language in 2003 is generally pessimistic. There is so much poor practice and so little attempt to redress this that we do not feel we can support this draft report as it stands as an adequate record of the current situation.

Accordingly we will consider the possibility of writing a shadow report to the UN with our organisational allies to present what we see as a fairer and more accurate picture.