



## **SUBMISSION BY AMICUS ON THE DRC'S CONSULTATION ON THE DEFINITION OF DISABILITY**

### **Introduction**

1. Amicus is the UK's largest private sector trade union and the fastest growing union in the public sector. With over 1.2 million members Amicus has members in a range of industries including, financial services, manufacturing, print and media, the voluntary and not for profit sectors, local government and NHS health professionals.
2. We welcome the opportunity to respond to the DRC's consultation on the definition of disability. Amicus agrees that the current focus on the individual's medical condition and the inability to participate in "normal" day-to-day activities is a negative approach and contrary to other discrimination law. Many people who have been discriminated against on the grounds of their disability fall at the first hurdle because they are not deemed to have a mental or physical impairment under the current definition. Therefore, a change in the definition of disability in the DDA is required from the medical to the social model approach
3. We support the TUC's arguments that under the DDA disabled people must be the focus as a distinct group in society who suffer disadvantage and discrimination. The DRC's proposal for "protection against discrimination on the grounds of impairment, regardless of level or type of impairment" would have the advantage of simplifying the definition and would remove the requirement to establish that a person's impairment has a long term or substantial functional impact. However, this proposal would extend protection under the DDA to those with short-term impairments and sickness which should not be the function of the DDA. Amicus would suggest that the DRC should look at the definition in more detail and recommend a new definition of who is protected against disability discrimination, with the focus being on removing the barriers to discrimination.

The following responds to the order of the questions in the questionnaire.

**Q1 Do you think that the way in which “disability” is defined in the DDA 1995 should be changed and why?**

We support the DRC’s view that the definition of disability should be changed from a medical model to a social model of disability. There needs to be more emphasis in the DDA on the act of discrimination and removing the barriers faced by disabled people in employment. The focus on the necessity to prove the extent of the person’s impairment and the ability to carry out day-to-day activities, means that many disabled people who have been discriminated against fall at the first hurdle because they are not deemed to be disabled under the DDA definition. This poses difficulties for disabled workers in challenging and gaining protection in the workplace.

The complexity of the DDA results in inadequate protection and redress for disabled people in the workplace, particularly in the area of reasonable adjustments. If an employer is of the opinion that a worker is not covered by the DDA then they will not make the necessary steps, including reasonable adjustments, to facilitate the necessary working conditions and individual aids needed for a disabled worker.

**Q2 If yes, do you think it should be changed to the approach set out in paragraph 33?**

Although Amicus supports a change in definition, we do not support the proposal in the consultation that the DDA should be amended to provide “protection against discrimination on the grounds of impairment, regardless of level or type of impairment”. The emphasis of the DDA must be on disabled people as a distinct group in society who suffer disadvantage and discrimination.

The DRC’s proposal for “protection against discrimination on the grounds of impairment, regardless of level or type of impairment” would have the advantage of simplifying the definition and would remove the requirement to establish that a person’s impairment has a long term or substantial functional impact. However, this proposal would extend protection under the DDA to those with short-term impairments and sickness which should not be the function of the DDA. Although, people with short-term impairments and sickness should be protected by the law, we do not believe that the DDA is the correct vehicle to achieve this.

Amicus would suggest that the DRC looks at the definition in more detail and recommend a new definition of who is protected against disability discrimination.

Any definition must ensure that disabled people are acknowledged as a distinct group. This is particularly important in relation to positive discrimination, action and the introduction of the new Public Sector Duty. Amicus would not like to see any action or duties deflected to those that are not disabled and do not face the discrimination, disadvantage and barriers of disabled people.

The proposal that the DDA be amended to require “entitlements to the removal of disabling barriers, and to submit its recommendations to the Government” would be welcomed. This would strengthen the Act as employers would be being required to take action and confirm that they had done so.

**Q3 If the Scrutiny Committee proposal was adopted which would be better?**

- **Simply stating that discrimination in relation to “impairment” is prohibited without further definition.**
- **Further elaboration of the meaning of impairment along the lines of the Australian and Irish definitions**
- **Other? Please state:**

As stated above we do not support the definition of impairment as proposed by the DRC Scrutiny Committee. The proposed alternative of the Australian/Irish definition would be unacceptable because of the language used, some of which is offensive in its nature, viewing the person with the disability as a problem rather than the discrimination and barriers that disabled people face in society.

Therefore, the DRC must take expert opinion and consult further with stakeholders, including disabled people, about a suitable definition that would ensure that the DRC is providing protection for disabled people as a distinct group and on removing the barriers that they face in society. The central point of the definition should not be on the impairment, but on the removal of these barriers. It is also necessary to ensure that “perceived disability” comes within any definition. The DRC will need to gain expert legal input to ensure that any definition will achieve these objectives, that the definition is clear and coherent, and that is not capable of being misinterpreted by the courts which will limit its effectiveness in protecting disabled people.

**Q4 If the Scrutiny Committee proposal was adopted, what would you see as the main benefits?**

As previously stated Amicus does not support the proposal in full. The benefit of focusing on the barriers would be that it would remove some of the complexities on whether a person meets the definition. This would make it easier to

understand and ensure the concentration was on the discrimination, the action required to remove the barriers and away from the individual's impairment.

**Q5 If the Scrutiny Committee proposal was adopted, what would you see as the main risks?**

- **Broadening the definition might lead to a weaker interpretation of non-discrimination rights**
- **Broadening the definition might discredit or trivialise disability discrimination law**
- **Other**

We have stated that the proposed definition was adopted it would lead to loss of protection for disabled people as a distinct group and additionally, would leave courts to make new restrictive interpretations of the law. Amicus recommendations for a new definition are detailed in the answers to questions 2 and 3.

**Q6 Would there be a need to ensure that priority could be given to those who are most in need of reasonable adjustments?**

Under the current proposals there would be a need to ensure that priority is given to those in most in need of reasonable adjustments. This would further complicate the law in this area and any changes in the definition are best dealt with in our answers to question 2 and 3.

**Q7 If the Scrutiny Committee proposal were adopted would there be an additional need for a more focused definition (i.e. those who experience the greatest level of inequality) to be adopted in relation to the Disability Equality Duty, or in relation to positive action more generally?**

Creating another level of definition is going to further complicate the law in this area and would not meet the objective of achieving more comprehensive and coherent discrimination legislation. Our recommendations in answers 2 and 3 would render another definition unnecessary. However, if the DRC was to recommend the introduction of their proposed definition it will be necessary to have a second level of definition to ensure that protection was provided to disabled people as a group.

We would welcome the opportunity to discuss the issues further.

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