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INTERVENTION

An Analysis of the Service Provider's Legal Duty to Make Reasonable Adjustments: The Little Mix Saga

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The recent dispute between a mother and organisers of a Little Mix concert is a controversial issue for the entertainment industry. Although the Supreme Court decision in *Paulley v FirstGroup plc 2017 UKSC 4* has attempted to clarify this duty placed on service providers, the law still remains unclear whether this duty involves access to an experience enjoyed by non-disabled individuals. It is argued that this is partly due to the legal uncertainty of the reasonable adjustment duty contained in the *Equality Act 2010*. This intervention will discuss the dispute in detail as it leaves service providers unclear as to what is, and is not, a reasonable adjustment for the purposes of discharging their legal duty to make reasonable adjustments under the *Equality Act 2010*. Any ruling in this case might clarify the nature of the duty and the extent to which an organiser is required to make reasonable adjustments for disabled individuals where the core service is an 'experience'. How far this duty extends remains uncertain. The author will consider how the failure to make reasonable adjustments may in some cases exclude disabled service users from mainstream activities enjoyed by non-disabled individuals. Theoretical models used to explain disability will also be explored to assist in understanding the duty owed by a service provider.

Keywords: duty to make reasonable adjustments; anticipatory duty; disability; discrimination; access to services

Introduction

As the entertainment industry grows many people attend concerts and enjoy the experience. In the UK, a 12 per cent rise in audiences attending live concerts was reported in 2017, amounting to £4bn in revenue (Ellis-Petersen 2017). Furthermore, the study revealed that audience numbers had increased to 30.9 million rising from 27.7 million in 2015 (Ellis-Petersen 2017). However, for some Deaf disabled individuals, participating in such events poses a number of difficulties that in turn results in them losing out on an experience. According to the World Health Organisation, five per cent of people worldwide have a disabling hearing loss and this figure is due to increase by 2050 to one in every ten people (WHO 2018).

Unfortunately for Deaf service users British Sign Language (BSL) does not have any legal status under current legislation unlike the *American Disability Act* 1990 (ADA 1990). This absence of status excludes British Deaf service users therefore from accessing experiences enjoyed by non-disabled individuals. It has been stated by the BDA that '… Deaf people are denied full citizenship and face widespread socio-linguistic exclusion and institutional discrimination.' (British Deaf Association 2014: 22). ADA 1990 placed the onus on service providers to ensure their service is accessible for individuals that have sensory impairments. Deaf individuals fall into this category, making it a legal requirement, on request, for service providers to provide an American Sign Language (ASL) interpreter for Deaf individuals attending concerts (Marks 2016). This in turn complicates the task of learning lyrics for a performance as ASL has its own language, grammar syntax, semantics and is based on ideas (Marks 2016). These requirements are similar to BSL and represent factors that arguably impact when assessing reasonableness. It has been recently argued that Parliament should attempt to strengthen the interpretation of 'reasonable adjustments' for Deaf BSL users (British Deaf Association, 2015) to follow that of practice in the US. The recent dispute concerning a Deaf mother who attended a Little Mix concert has highlighted the legal uncertainty as to the extent of a service provider's duty to make reasonable adjustments for a Deaf person attending a concert. This intervention will discuss the legal uncertainty of this duty and the impact it has on service providers and disabled service users.

Background to the Dispute

Unfortunately, for some individuals the effect of a service provider not making 'reasonable' adjustments for disabled users may result in a less than satisfactory experience attending with their family and friends. In most cases, disputes that challenge service providers to make changes are settled out of court (Powell 2009). The Supreme Court decision in *Paulley v FirstGroup plc 2017 UKSC 4* has been instrumental for guidance. Its ruling suggested that service providers have to go beyond making adjustments to ensure any disadvantage is removed; simply making adjustments will not in itself be enough to discharge a service provider's duty to make reasonable adjustments. The question remains as to what will amount to a reasonable adjustment when a disabled service user's experience is at stake.

In 2017 Ms Reynolds (who is Deaf) purchased six tickets to attend a concert with her two Deaf friends and their daughters (who are able to hear). She requested LHG Live, 'the organisers', to provide a BSL interpreter for the whole concert (Coleman 2018). Initially, she was offered carer tickets to enable her to bring her own interpreter to the concert but argued that these adjustments did not meet her specific needs as the tickets did not provide her full access to the songs (Coleman 2018). These tickets would only cover the cost of the interpreter's presence at the event, but not the cost of the interpreter's services. This placed the responsibility on Ms Reynolds to organise and bear the cost of the interpreter's services. Without this adjustment, Ms Reynolds was not able to share the same experience as her daughter and her daughter's friend.

Ms Reynolds initiated legal proceedings days before the concert was due to take place and sought an injunction to ensure the promoters provided a BSL interpreter for the entire concert; this would enable her to have full access to the experience. Shortly after, the organisers provided an interpreter for Little Mix's set and specific stage lighting. However, they failed to provide an interpreter for the first two supporting acts which resulted in Ms Reynolds and her two Deaf friends losing out on the opportunity to enjoy the same overall experience. It was clear that the organisers made some adjustments; however Ms Reynolds argued that these adjustments did not meet her specific needs as they failed to provide her with an interpreter for the entire concert. The organisers told the BBC that: '... [They] consulted with her recommended agency and agreed to provide the professional interpreter of her choice for the Little Mix show' (Coleman 2018). In addition, 'LHG Live also provided upgraded tickets, access to private accessible toilets and all public announcements on giant screens either side of the main stage.' (Coleman 2018).

In disputes similar to Ms Reynolds' case, disabled service users have required access to particular events in the same manner as anyone else (Powell 2009). Assessing the reasonableness of the adjustment proved problematic for Ms Reynolds in that her experience was less than satisfactory compared to people that were able to hear, therefore placing her at a substantial disadvantage compared to non-disabled individuals (section 20(3) and Schedule 2(2), *Equality Act 2010*). Although there was an attempt (albeit as a consequence of legal proceedings being issued) to 'make reasonable adjustments', it remains unclear as to the requirements of this duty in this type of context.

Explaining Disability: The Medical and Social Model

In order to understand disability different theoretical models have been used to explain the inequality that exists amongst disabled individuals. These models have assisted in understanding disability as legislation has struggled to deal with societal attitudes in respect to inclusion. The medical model assumes that the disabled person's autonomy is limited due to the impairment, which restricts their participation in mainstream activities (Shakespeare and Watson 2001), in this case the experience of enjoying a concert with friends and family members. Conversely, it has been argued that disability is best understood in social terms as it focuses on the removal of social barriers in an attempt to promote inclusion and social change leading to the transformation of society (Shakespeare and Watson 2001). These models are crucial to understanding the duty owed to disabled service users since the legal definition deployed is based on this medical model. The medical model suggests that the disabled person's autonomy is limited due to their impairment. Where a medical professional cannot cure or rehabilitate the individual their participation in society is limited (Bunbury 2019). This has been a founding principle for the current legislation (s.6 *Equality Act 2010*) which instead of transforming attitudes exacerbates the underlying issues (Bunbury 2019) by suggesting that the problems with disability arise from a deficit in an individual's body (Shakespeare and Watson 2001). As a result, some service providers have fallen foul of the legal duty to make reasonable adjustments.

The organisers (service providers) in this dispute placed the onus on the disabled individual to arrange their interpreter, in effect framing the situation so that the disabled person's impairment was 'their' issue. As a consequence, it was the disabled individual's responsibility to hire an interpreter and to bear the hiring costs. This reasoning is in line with the principle behind the medical model (reflected in the *Equality Act 2010*) which implies that the disabled person is in need of help, thus 'blaming' Ms Reynolds for being disabled. This effectively created a scenario of self-fault and vulnerability and therefore excluded Ms Reynolds from this mainstream activity enjoyed by non-disabled individuals.

Although Ms Reynolds instigated legal proceedings, there have been a number of Deaf individuals who find citizenship difficult and have identified barriers to participation in typical everyday activities that allow for the ability to maximise choice and control (Harris and Bamford 2001). Such individuals encounter issues specifically in terms of equal treatment which then limits their decision-making capacity compared to that of people with hearing (Harris and Bamford 2001). Empirical research conducted by Harris and Bamford (2001) reported that these issues continue to restrict Deaf people from contributing to society (Harris and Bamford 2001). Nevertheless, the reasonable adjustment

duty attempts to break down these barriers and deal with societal issues that prevent disabled individuals from participating in mainstream activities (Bunbury 2018).

In contrast to the medical model, the social model advocates integration and recognises the need for a disabled person to enjoy and participate in mainstream activities that non-disabled individuals enjoy. It also advocates accepting difference in society and suggests that it is not the disabled person that needs 'fixing' but rather puts the onus on society adjusting to the differing needs of individuals (Bunbury 2018). The social model adopted in 2006 and ratified in 2009 by the UN Convention on the Rights of Persons with Disabilities (UNCRPD) suggests that disability arises from the interaction between people and attitudes, and concludes that it is an unhelpful environment that may prevent full and effective participation (UN Preamble, para e). It appears that the attitude of the promoters mirrored society's view perhaps – that Deaf people are unlikely to attend concerts – which in turn, prevented Ms Reynolds from participating in a mainstream activity that is generally enjoyed by non-disabled individuals.

Development of Anti-Discrimination Legislation

Whilst legislation aimed at combatting discrimination has made progress, it is apparent that disabled people continue to be excluded from mainstream activities. The law in the UK has been based on theories used to define disability and is predominantly based on the medical approach. This approach focuses on an unstated assumption that impairment is the issue rather than a deficiency when it comes to recognising difference (Goodley, Hughes and Davis, 2011). This type of framing has been the basis for legislation in Australia in 1992 (Disability Discrimination Act 1992) and Great Britain in 1995 (Disability Discrimination Act 1995; Heyer, 2000). The Disability Discrimination Act 1995 and the Disability Discrimination Act 2005 were the first pieces of legislation enacted to confer disabled people relevant rights as protection against harassment and discrimination (Hepple, 2014). Legislation is still struggling to tackle issues faced by Deaf people (British Deaf Association 2015). Since the enactment of the *Equality Act 2010*, legislation has accomplished little to support the legal rights of BSL users (British Deaf Association, 2015). Although there has been increased emphasis on social inclusion, actually legislation and services used by Deaf and hard hearing people has been seen to fail to promote full inclusion in society by many experts' standards (Harris and Bamford 2001).

In order for a disabled service user to be afforded legal protection, an individual must satisfy the statutory definition (s.6(1) *Equality Act 2010*). Once this definition is satisfied, the duty to make reasonable adjustments is triggered (s.20(3) as in Schedule 2(2), *Equality Act 2010*). For the statutory definition to function in this way, a person is required to have a physical or mental impairment. The impairment must have a substantial and long-term (12 months) adverse effect on a person's ability to carry out normal day-to-day activities. It is clear that a Deaf person will normally satisfy this criteria although Harris and Bamford (2001) suggest that: '... there is considerable disagreement within the Deaf community and amongst commentators as to whether or not (and in what circumstances) deafness should be regarded as a disability' (Harris and Bamford 2001: 970).

A service provider is not comprehensively defined under the *Equality Act 2010* but it states that a service provider is a person concerned with offering a service to the public (s.29 *Equality Act 2010*). It is irrelevant as to whether there has been payment for the service (s.29(1) *Equality Act 2010*). The suggestion made by the organisers that Ms Reynolds pay for the adjustments is considered unlawful under the Act (s.20 (7) *Equality Act 2010*; *Ross v Ryanair Ltd and Stansted Airport Ltd* [2004] EWCA Civ 1751). Such an argument is rooted in the medical model by placing the onus on the disabled individual or put simply, shifting the responsibility to the disabled person. The conclusion must arise that the organisers were not offering the service in the same manner or terms in comparison to a non-disabled individual (S.31 (7)(b) *Equality Act 2010*), thus placing Ms Reynolds at a substantial disadvantage (s.20(3) *Equality Act 2010*).

The Dispute and the Effect of the Service Provider's Legal Duty to Make Reasonable Adjustments

Although there has been much emphasis on social inclusion, legislation and services used by Deaf and hard of hearing people fail to promote full inclusion (Harris and Bamford 2001). The legal duty owed to service users by service providers under the *Equality Act 2010* is anticipatory in that service providers are expected to be proactive in generally assessing the needs of disabled service users (Explanatory Notes 684 *Equality Act 2010*). The anticipatory requirement of the duty makes it difficult for service providers to provide full access to services. In Ms Reynolds' case this equivalent access should have included all aspects of the concert experience. However reasonable adjustments have not been fully defined. Lawson states that:

> Unlike the purely reactive duties relating to employment and premises, these anticipatory duties require adjustments to be made in advance of the appearance of a particular disabled person wishing to make use of the operation in question [however] it does not preclude the possibility that duty-bearers will, in addition, be required to react to the circumstances of a particular case by implementing reasonable adjustments to accommodate the needs of a specific disabled individual. (2008: 92)

The anticipatory element of this duty contained in *The Services, Public Functions and Associations Statutory Code of Practice* ('*Statutory Code of Practice*'; EHRC 2011) has focused in particular on requirements for duty-bearers to be proactive by taking reasonable steps to remove or alter disabling barriers (Lawson 2008). The *Statutory Code of Practice*

also offers guidance in assessing reasonableness. It may be necessary in some circumstances for service providers to respond to the particular needs of a disabled person once they become aware of a particular difficulty encountered by the disabled person in accessing a service (Lawson 2008). As noted in *Roads v Central Trains [2004] EWCA Civ 1541*, the proactive requirement of the duty extends to all disabled individuals generally (Tyrer 2014). This would seem to suggest that the organisers of the concert were required to anticipate Deaf concert-goers needs by removing disabling barriers to ensure Ms Reynolds had an opportunity to enjoy the experience in the same manner to that of a hearing person. In Ms Reynolds' case, this arguably would have involved organising an interpreter, not just for the main acts but also for the supporting performances.

Assessing Reasonableness

UK Case Law

As noted earlier, the concept of reasonable adjustments has not been defined in the *Equality Act 2010* and research in this area is limited (Harris and Bamford 2001). This has created legal uncertainty for service providers. The resulting steps to be anticipated may for instance be dependent on the size of the service provider, resources available and impact the disability has on the individual (*Statutory Code of Practice*: para 7.29). The anticipatory approach was adopted in *Roads v Central Trains [2004] EWCA Civ 1541*. The court confirmed that:

> ...the policy of the [Disability Discrimination Act 1995 now enshrined in the *Equality Act 2010*] is not a minimalist policy of simply ensuring that some access is available to the disabled: it is, so far as reasonably practicable to approximate the access enjoyed by disabled persons to that enjoyed by the rest of the public (para 30).

The requirements of the duty are now reflected in the *Statutory Code of Practice* (para 7.4). It is clear that the ruling in *Roads v Central Trains [2004] EWCA Civ 1541* and the instance of *Paulley v FirstGroup plc 2017 UKSC 4* emphasises that group disadvantage may also be crucial in determining or assessing reasonableness in anticipatory reasonable adjustment claims (Lawson 2008). This duty places the onus on service providers to anticipate the needs of a class of potential disabled service users to ensure disabled individuals are not placed at a substantial disadvantage (s.20–21 *Equality Act 2010*; Lawson 2008). To be clear, this duty involves consideration of disabled people *generally* (Tyrer 2014). In *Finnigan v Chief Constable of Northumbria* [2014] WLR 445 a claimant's house was searched by the police. The claimant argued that the police should have provided a BSL interpreter. In this specific case it was held that the police not bringing a BSL interpreter to search the claimant's house was not reasonable in the circumstances as effective communication between the parties had been established (Tyrer 2014). The Court of Appeal, in this case, was criticised for not considering Deaf disabled people generally in assessing whether a particular adjustment was reasonable: 'This case upholds the anticipatory nature of the reasonable adjustment duty for public authorities, but may imply that this can also limit the scope of the duty, in that ad hoc adjustments are not required' (Tyrer 2014).

The Explanatory Notes in the *Equality Act 2010* expands on this duty and provides examples of actions a service provider may take in order to discharge the duty; these include altering the way actions are undertaken and changing the built environment (*Equality Act 2010* EN 82). The last requirement outlined in the Explanatory Notes (*Equality Act 2010* EN 82) even more importantly highlights the requirement to provide auxiliary services, which in the case of the Little Mix concert would have potentially been to organise an interpreter for the entire concert. It remains unclear whether providing the interpreter for part of the concert would have satisfied the 'reasonableness' requirements under the Act.

A comparison can be drawn with the US where it has been reported that:

> [American Sign Language] ASL interpreters are becoming more commonplace when making major music festival and concerts accessible to fans with hearing loss. Interpreters provide a service, giving ticketholders with a disability a more complete experience for their money. (Marks 2016)

This author's view is that it was apparent that the organisers had failed to proactively ensure Ms Reynolds' experience was as close as possible to that of a non-disabled person by not providing her with an interpreter for the supporting acts (Coleman 2018). Wadham et al state:

> ... duty-holders should go beyond merely avoiding discrimination against disabled people who face barriers that would place them at a substantial disadvantage [but instead] should take positive steps to ensure that disabled people can access services in a manner that as closely as possible resembles the access enjoyed by other members of the public (2012: 82).

Although the organisers made some adjustments, the quality and manner in which the service was provided could be construed unlawful under s.31(7) *Equality Act 2010.* As noted in *Roads v Central Trains [2004] EWCA Civ 1541*, partial access is not sufficient enough to discharge the legal duty imposed on service providers to make reasonable adjustments. In particular, Ms Reynolds was not afforded protection as a Deaf BSL user as some access was granted

but only after legal intervention which did not remove the substantial disadvantage. As a result, not having an interpreter for the entire concert impacted on Ms Reynolds' dignity in that she felt offended by the treatment she received. This prevented her from access to all the performances which meant she did not have an opportunity to enjoy the fullest possible experience compared to a non-disabled person attending the concert. The *Statutory Code of Practice* highlights:

> ... rude or offensive behaviour towards a customer or potential customer will constitute a lower standard of service or a detriment. A lower standard of service might constitute not providing the service in the manner and the terms on which the service is normally provided. (*Statutory Code of Practice*: para.11.20)

Although a service provider is required to proactively make reasonable adjustments, they are not under a legal duty to fundamentally alter the nature of the service (*Equality Act 2010* para. 2(7) of Schedule 2 & *Edwards v Flamingo Land* [2013] EWCA Civ 801). In some cases, it is impossible for service providers to anticipate the particular needs of a disabled individual in attempting to use a service (Lawson 2008). In Ms Reynolds' case it would have been obvious that some Deaf people would attend a popular concert. Therefore, arguably, the organisers should have anticipated that a group of disabled individuals could have been placed at a substantial disadvantage if a BSL interpreter was not arranged for the entire concert.

This case is of crucial importance, as it involves consideration as to whether the organiser's adjustments were reasonable in respect of discharging their legal duty. Case law has on occasions attempted to clarify aspects of this duty. In *Royal Bank of Scotland Group plc v Allen* [2009] EWCA Civ 1213 CA, the bank had failed to provide wheelchair access for disabled users. Although an alternative service was offered, the Court of Appeal ruled that the duty to make reasonable adjustments extended to installing a lift to access the service. Interestingly in *Roads v Central Trains [2004] EWCA Civ 1541*, Mr Roads was unable to access a platform at a train station via a footbridge or rutted alley (an alternative route). Mr Roads claimed that Central Trains were under a legal duty to provide a taxi so that he could access the train station. The Court of Appeal ruled that Central Trains failed to provide an alternative method of access to the station. In Ms Reynolds' case some access was available, although she argued that this was not acceptable in that she did not share the same experience as her daughter and her daughter's friend.

Lord Justice Sedley's comments in *Roads v Central Trains [2004] EWCA Civ 1541* are useful for determining how the reasonable adjustment duty operates. He highlighted that in some cases adjustments may be reasonable in the circumstances if the alternative to them is demeaning, but if there are several options, a proffered solution may not be deemed reasonable when there are several better solutions. He further suggested that the reason for this is because the purpose of the *Equality Act 2010*[1] 'is to provide access to a service as close as it is possible to get to the standard offered to the public at large' (*Roads v Central Trains [2004] EWCA Civ 1541*).

The ruling in *Ross v Ryanair and Stansted Airport Ltd* [2004] EWCA 1751 concerned a policy which required disabled service users to pay an additional charge for using a wheelchair at Stansted Airport. The court concluded that the cost of providing assistance to those with mobility impairments was considered to be reasonable in order to access a service and therefore should not pass onto the disabled person (Lawson 2008). Both Ryanair and Stansted Airport Ltd were jointly liable.

Paulley v FirstGroup plc 2017 UKSC 4

Even more significantly, the Supreme Court's decision in *Paulley v FirstGroup plc 2017 UKSC 4* attempted to clarify the legal uncertainty of one service provider's duty to make reasonable adjustments (s.29(7) and s.20(3) *Equality Act 2010*). In this case, Mr Paulley (a wheelchair user) attempted to board a FirstGroup bus. The bus company's policy was to 'request' other passengers to vacate the space if a wheelchair user attempts to board a bus (Tyrer 2017). The bus company ensured that there was a notice in the area reserved for wheelchair and prams requesting that non-wheelchair users give up the space for wheelchair users. When Mr Paulley attempted to board the bus, the wheelchair space was occupied by a mother who had her child in the pushchair. The driver asked the woman to fold her pushchair so that the wheelchair user could board the bus, but the woman refused to do so. As a result, the wheelchair user could not board the bus and because of this Mr Paulley missed his vital rail connection to his destination.

Mr Paulley issued legal proceedings against FirstGroup for unlawful discrimination and successfully sued FirstGroup in Leeds County Court and was awarded £5,500. FirstGroup appealed the decision. The Court of Appeal overturned the decision stating that it would go beyond what was reasonable and concluded there was no breach of the duty to make reasonable adjustments. The judgement stressed that 'It would go beyond what was reasonable to have a policy that priority for wheelchair users should always be enforced as a matter of requirement' (Tyrer 2017). However, the Supreme Court upheld the claimant's appeal and ruled that FirstGroup had not done enough to comply with their legal duty to make reasonable adjustments under the *Equality Act 2010 s.29*. The policy requesting other passengers to vacate the bus was not sufficient to comply with the legal duty to make reasonable adjustments. The ruling in the case highlighted that: '... it was not enough for FirstGroup to instruct its drivers simply to request non-wheelchair users to vacate the space, and do nothing further if the request was rejected (para 66).'

In addition, it was noted by Lady Hale:

> ... that there will be some circumstances in which it is not reasonable to expect an existing occupier to vacate the wheelchair space. This is so, although it is important to bear in mind that non-disabled people are not entitled to be treated in the same way as disabled people. There is no duty to make reasonable adjustments for them (para 105).

In circumstances where the non-disabled person refuses to vacate the space, the driver is required to take further steps to pressurise or shame the non-wheelchair user to vacate the space (*Paulley v FirstGroup plc 2017 UKSC 4*). This gives some discretion to the driver which may be problematic and creates uncertainty for service providers regarding the steps that they are required to take in order to discharge their legal duty (*Paulley v FirstGroup plc 2017 UKSC 4*). It was noted in this case that the bus company had already made some adjustments to its 'first come first served' policy in relation to the space available for wheelchairs and prams, but this was not sufficient to discharge their legal duty as it placed wheelchair users at a substantial disadvantage in comparison to non-disabled people (Tyrer 2017). Lord Toulson indicated in the judgement that it is acceptable to adopt a policy that uses moral pressure, therefore it may be deemed reasonable for a service provider to adopt such a policy (Lawson and Casserley 2017). He highlighted that 'the fact that the policy might not work in every case does not make it valueless' (*Paulley v FirstGroup plc 2017 UKSC 4 para 83*). The court made it clear that the reasonable adjustments requirement in its view was not solely concerned with whether a disabled person is placed at a disadvantage; it is also about whether a policy or provision, criterion or practice (PCP) places a disabled person at a *substantial* disadvantage (Disability Rights UK 2012, & *Equality Act 2010* s.29(7), s.20 and Schedule 2). Therefore, there was no defence for FirstGroup to argue that it would not be reasonable to exert moral pressure on passengers that refuse to move from the wheelchair space if a wheelchair user attempts to use the bus service (Lawson and Casserley 2017).

Although the decision in *Paulley v FirstGroup plc 2017 UKSC 4* created a precedent to be followed, it was decided in *Black v Arriva North East Ltd, (County Court decision)* [2013] EqLR 558 that a policy that included a 'first come first served policy' did not fall foul of the reasonable adjustment duty as it did not place the disabled person at a substantial disadvantage to wait for another bus (Tyrer 2017). However, it was noted in this case that the County Court failed to consider Schedule 2 of the *Equality Act 2010* when reaching their decision and as a result of this failed to recognised the anticipatory duty owed to disabled service users (Tyrer 2017).

These decisions illustrate that although some service providers have attempted to make adjustments, the precise nature of the duty remains somewhat unclear as to what in practice constitutes 'reasonable' for the purposes of discharging their obligations to make reasonable adjustments. Previous decisions seem to highlight that reasonableness differs depending on the circumstances of each case. The concept is arguably too wide. In the case of Ms Reynolds there is support for Parliament to strengthen the *Equality Act 2010* to promote BSL as a language although the *Equality Act 2010* offers protection for Deaf people (British Deaf Association 2015). In *Paulley v FirstGroup plc 2017 UKSC 4* it was simply a matter of keeping the space clear. This dispute regarding the Little Mix concert differs slightly in that the service provider would have needed to be proactive and consider additional steps beyond minimal acknowledgement of Ms Reynolds' needs. It is also useful to highlight that the adjustments recommended in *Paulley v FirstGroup plc 2017 UKSC 4* had an impact on a third party in the respect that the mother and baby were required to vacate the space on the bus reserved for disabled service users. The *Paulley v FirstGroup plc 2017 UKSC 4* decision thus prioritises wheelchair users to the detriment of other service users. For the service provider at the concert, by contrast, additional costs in providing a BSL interpreter for the entire concert represent another aspect to making 'reasonable adjustments'.

Assessing Reasonable Adjustments

The Little Mix dispute raises other considerations when assessing reasonable adjustments for the purposes of activities performed on a service provider's premises. Such factors contained in the *Statutory Code of Practice* include:

> the extent to which it is practicable for the service provider to take the steps; the financial and other costs of making the adjustment; the extent of any disruption which taking the steps would cause; the extent of the service provider's financial and other resources; the amount of any resources already spent on making adjustments; and the availability of financial or other assistance (para 7.30).

Some of these factors were taken into account in *Glover v Lawford t/a Hannah's Café* (10 March 2003, County Court decision) where Mr Glover was refused entry to a café because of his guide dog due to the café operating a 'no dogs in the eating area' policy (Slater 2003). The defendant argued that his overriding concern was financial loss to the business, but also made the case that having a guide dog in the café was a hygiene issue. This was rejected by the judge (Slater 2003). The judge stated that '... the defendant's opinion that guide dogs present a danger to health and safety was not a reasonable one for him to hold in all the circumstances of the case' (Slater 2003).

UK law remains unclear concerning how reasonableness is judged, and as to how far reasonableness extends, in situations where a service provider has attempted to make some adjustments for a Deaf service user. Case law in general

mandates that the onus is on the service provider to make reasonable adjustments. Yet it is questionable as to whether this approach should be followed in all disputes concerning access to any particular activity or service being performed. It has been argued that the guidance in *Roads v Central Trains [2004] EWCA Civ 1541* applies to situations where the service provider has to assess the option of removing or altering the service by providing an alternative method, such as a face to face service instead of an online service (see Disability Rights Commission 2007) for example.

Comparisons

Further guidance from Australian and American authorities are particularly useful in assessing reasonableness under the *Equality Act 2010*. The legislation in both jurisdictions is similar to UK legislation and is therefore instructive in understanding some of the unanswered questions arising in this dispute. In *Bruce Lindsay Maguire v Sydney Organising Committee for the Olympic Games, HREOC No:H99/115, (Australian) Disability Discrimination Act 1992, 24 August 2000* Mr Maguire who was blind made numerous complaints to the Human Rights and Equal Opportunities Commission about the non-provision of information in Braille and the Committee's inaccessible website. Mr Maguire was successful in his case proving that the website breached the Australian *Disability Discrimination Act* 1992.

A comparison can be drawn with the UK in that it mirrors the provisions contained in the *Equality Act 2010*. In the Maguire case the Commission concluded that the detriment he experienced was 'very significant' (Hayward 2006). The financial resources (which included government funding) that were available to the Committee for the Olympic Games did not constitute a viable defence and the steps that could have been taken only necessitated a relatively modest expenditure on the part of the defendant to make the necessary adjustments (Hayward 2006). Mr Maguire was awarded $20,000 in compensation. Hon William Carter QC stated:

> To dismiss him and to continue to be dismissive of him was not only hurtful, he was made to feel, I am satisfied, various emotions including those of anger and rejection by a significant statutory agent within the community of which he was a part. (Bruce Lindsay Maguire v Sydney Organising Committee for the Olympic Games, HREOC No:H99/115, (Australian) Discrimination Act 1992, 24 August 2000)

Another interesting decision is noted in *Attorney General of the State of New York Internet Bureau v Ramada.Com and Priceline.Com, Assurances of Discontinuance dated 12 August 2004 and 8 April 2004* which concerned a hotel booking website offering travel services and products. The Attorney General concluded that both companies had made the service inaccessible to the assistive technology used by the blind and visually impaired. Both companies agreed to a detailed written assurance and agreed to pay costs. The companies were ordered to:

> [provide] a text equivalent for images, an auditory description of important visual information, a prominent change font size button, and the provision of [training for programmers and guidelines for implementing change in the organisation to ensure accessibility for the blind and visually impaired]. (Hayward, 2006: 3–4).

These rulings serve as some guidance as to the factors the court may take into account in assessing reasonableness to ensure services are accessible for disabled users. Both decisions have ruled in favour of making the service accessible for disabled service users. It is interesting to note that where costs are concerned the court will consider the size and undertaking of the organisation as demonstrated in *Bruce Lindsay Maguire v Sydney Organising Committee for the Olympic Games, HREOC No:H99/115, (Australian) Discrimination Act 1992, 24 August 2000*.

As previously mentioned, assessing reasonableness much depends on the particular circumstances of each case as demonstrated in the Little Mix dispute. Powell (2009) adds that:

> There is no definitive answer as to what adjustments need to be made – it is a question of what is possible and what is reasonable. However, service providers should bear in mind the provisions of the [*Statutory Code of Practice* in assessing reasonableness].' Although the concert organisers were forced to provide an interpreter by way of an injunction, it can be useful in changing the service provider's behaviour (Powell 2009: 25).

Conclusion

The ruling in this case if adjudicated will set a legal precedent for service providers as to how far the reasonable adjustments duty can be stretched because of the reasonableness of Ms Reynolds' request to provide an interpreter for the entire concert. This present dispute places importance on making services accessible to disabled individuals by ensuring the experience is as close as possible to that provided to a non-disabled person and is therefore, not a minimalist approach (*Statutory Code of Practice* paragraph 7.4 and *Roads v Central Trains [2004] EWCA Civ 1541*).

As the law currently stands, it is extremely difficult for service providers to assess reasonableness and provide full accessibility to services. The legal decisions to date and the *Statutory Code of Practice* are unclear in assessing the reasonableness of an adjustment as there are many factors a service provider has to consider in gauging the reasonableness of the proposed adjustments. The case of *Paulley v FirstGroup plc 2017 UKSC 4* adds to this confusion by suggesting moral pressure may be required in assessing the reasonableness of a proposed adjustment, further adding to the complexities

of assessing reasonableness. As *Paulley v FirstGroup plc 2017 UKSC 4* indicates, if the disabled person is placed at a substantial disadvantage (which includes a provision, some criteria and actual practice) and adjustments have been made, it may still be questionable as to whether the service provider's adjustments were reasonable for the purposes of discharging their legal duty under the *Equality Act 2010*. This assessment is heavily dependent on the disabled person's condition and on external factors. It is clear that some service providers will not take any action until threatened by the law. In cases such as those, even financial compensation does not solve the issue of the failure to make adjustments as the disabled individual loses out on a mainstream activity that non-disabled individuals enjoy. The disabled service user '... requires more than just financial compensation' (Powell 2009: 25) – for example, access to an experience enjoyed by non-disabled individuals. Some access in Ms Reynolds' case was not enough.

The dispute under discussion suggests that some service providers do not consider certain adjustments to be reasonable; therefore, educating service providers to proactively consider the extent of adjustments for all types of disabilities (whether hidden or physical) could be a step in the right direction to ensure inclusion for all types of disabled service users (including Deaf audiences) where the experience is (in fact) the core service. This may in turn assist in breaking down barriers and undoubtedly challenge preconceived attitudes towards disability. Clarifying the law in this area will also assist service providers in meeting their legislative duties under the *Equality Act 2010*, thus, minimising and eventually putting an end to the uncertainty of the legal duty to make reasonable adjustments. Had Ms Reynolds been provided with an interpreter for the entire performance (including the supporting acts), it would have been a useful remedy to protect her dignity. Not only would this have been a benefit for her but also LHG live, as the concert would have been fully accessible for other Deaf disabled service users wishing to attend and enjoy the performances. In *Paulley v FirstGroup plc 2017 UKSC 4* it was a matter of keeping a space clear for a wheelchair user to access, whereas in the Little Mix dispute the service provider was asked to provide something in addition – providing a BSL interpreter for the entire concert – to the adjustments that had already been made.

It remains unclear whether the decision in *Paulley v FirstGroup plc 2017 UKSC 4* will have an impact on the Little Mix saga, although *Paulley v FirstGroup plc 2017 UKSC 4* highlights that the courts are increasingly sympathetic to accommodating disabled service users and their rights to access. However, it is arguable as to whether the use of a bus service can be compared to attending a concert, a mainstream activity enjoyed by some non-disabled users; using a bus is an *essential* service that disabled individuals may need to use to carry out their daily activities. Whether the adjustments made by the concert organisers were 'reasonable' and the extent of the legal duty placed on service providers to make reasonable adjustments more widely, remains an unanswered question.

Note

[1] Under the previous *Disability Discrimination Act* 1995 which is mirrored in the *Equality Act 2010*.

Publisher Note

This article was amended in August 2026 to correct the date of Ms Reynolds' ticket purchase from 'January 2018' to '2017'. The amendment does not affect the analysis or conclusions of the article.

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Competing Interests

The author has no competing interests to declare.

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