

The Prime Minister's Office  
10 Downing Street  
London  
SW1A 2AA

Our Ref: CF/13133.001

Your Ref:

Pre-Action Protocol Letter – Judicial Review

By E-Mail Only: [boris.johnson.mp@parliament.uk](mailto:boris.johnson.mp@parliament.uk) & [newproceedings@governmentlegal.gov.uk](mailto:newproceedings@governmentlegal.gov.uk)

28<sup>th</sup> March 2020

Dear Sir/Madam

**Re: Inclusion of Deaf People in Live National Addresses on Coronavirus  
Provision of British Sign Language Interpreting at Live National Addresses**

We write following our letter of 16<sup>th</sup> March 2020 and pursuant to the Judicial Review Pre-Action Protocol.

We act on behalf of [REDACTED] who is Deaf and whose first language is British Sign Language. [REDACTED] is unable to follow the advice which your Government provides by way of the Prime Minister's live daily television address because you are not providing a BSL English Sign Language Interpreter in person to work alongside the Prime Minister and his special advisers.

[REDACTED] is 85 years old, and lives on his own. He has no internet access and relies upon analogue television with subtitles to be able to follow media broadcasting. As English is not his first language, he cannot follow subtitles easily because they move too quickly in any event. He has a basic mobile phone which he uses to send and receive text messages.

In addition, he has Diabetes and underlying health conditions. [REDACTED] only learned of the Government's emergency self-isolation measures when his daughter communicated them to him on one of her visits. He has therefore been excluded from the information provided by the government due to a lack of BSL interpretation and is therefore quite isolated, and anxious as to the steps which the Government is taking as they impact on him, his health and care needs.

As you know from our earlier letter (attached again for ease of reference) the situation is not only a concern as a result of the inability of [REDACTED] and other Deaf people to access the broadcasts. It is also a concern because of the message that it sends that Deaf people are not to be included in a vital message that could mean literally life or death.

Details pursuant to the Judicial Review Pre-Action Protocol are set out below.

## **Proposed Claimant**



## **Proposed Defendant**

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## **Decision Challenged**

The decision not to provide a BSL English Sign Language Interpreter (an Interpreter) in person with the Prime Minister for live national addresses.

The Prime Minister's Office acknowledged our earlier letter on 16/03/2020. We assume that the decision not to provide an Interpreter will have been taken prior to the first broadcast. We would be grateful if you would clarify this for us.

As set out below, given the urgency of this present situation, we are now seeking a response with 2 working days to this letter before action, but would be happy to extend that should you request a longer timescale with good reason.

## **Our Reference Details**

As above

## **Factual Background**

██████████ is profoundly deaf. British Sign Language is his first language. He cannot follow conversations, or access spoken information without an Interpreter. He is a disabled person within the meaning of s.6 of the Equality Act 2010.

The duty to make information that is provided by the PM's office accessible belongs to the Prime Minister's Office (see below) and not to a Broadcaster (unless there is a contractual requirement imposed on them by the Prime Minister that we are unaware of).

We understand however that the BBC is occasionally providing an Interpreter for this information on Channel 107 (News) only. This is problematic for a number of reasons. Primarily not every Deaf person has access to the interpretation as they do not have access to the BBC online. In any event, if people do access the BBC, most people we understand from those who have expressed their concern to us, and certainly our client, tune into BBC One through which channel the Government chooses to disseminate information by way of a National Address. BBC One does not provide an Interpreter for its live broadcasts of this information.

Where broadcasters provide BSL English Interpreting that interpreting is time lagged by at least 20 seconds. This means that repeated signed clips show out of synch passages of signing which often do not relate specifically to what is being reported. Where clips of the Prime Minister's address are shown, those clips themselves are usually not shown with BSL English support either.

As the Prime Minister recognises, every one of the country's citizens is waiting on every live national address to understand the scale of the current Coronavirus pandemic, what is expected of us as individuals and within our communities, and what the Government is proposing to do to assist us with managing significant social change and public health risk.

It is therefore critical that our client has access to this information in a timely and inclusive manner.

Many other Heads of State already provide live signed support in these circumstances, for example the Prime Minister of New Zealand and recently the First Minister of Scotland. The cost of providing a BSL English Interpreter is very modest indeed.

## **Grounds of Challenge**

### **Equality Duties**

There is no indication in respect of your decision to hold National Addresses that the Public Sector Equality Duty (PSED) has been complied with.

Pursuant to Section 149 of the Equality Act (commonly referred to as the Public Sector Equality Duty (PSED)):

(1) A public authority must, in the exercise of its functions, have due regard to the need to –

- Eliminate discrimination;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to-

- (a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) Take steps to meet the needs of persons who share a relevant characteristic that are different from the needs of persons who do not share it.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but it is not to be taken as permitting conduct that would otherwise be discriminated by or under this Act.

There appears to have been no adequate consideration of how to provide deaf people with this information at the live national address.

The proposed Claimant believes that the Prime Minister's Office has failed to comply with its duty under s149 Equality Act 2010 both to have due regard to (i) the need to eliminate discrimination and/or (ii) the need to advance equality of opportunity for people with disabilities, in this case hearing loss.

The PSED applies to individual decisions as well as policy development and includes consideration of whether the public body's function in question can be used to advance equality of opportunity and eliminate discrimination, not just avoid adverse or negative impact (see for example the summary in R (Bracking & Others) v SSWP [2013] EWCA Civ 1345 , approved of by the Supreme Court in several cases subsequently). Compliance with the PSED also involves undertaking sufficient enquiry (R (Hurley and Moore) v SSBIS [2012] EWHC 201 (Admin)), considering and weighing relevant considerations and evidence, and reaching a reasonable and rational conclusion, as with the exercise of any public function.

Despite the current circumstances, given the critical nature of the function being carried out by the Prime Minister's Office, and the fact that the PSED patently applied, the Prime Minister's Office should have carried out an impact assessment of the means by which it was to convey the information to the public. This would have immediately alerted it to the population of BSL users who would have been omitted from receiving this critical information. There is no indication that such an assessment has been carried out.

Given the lack of involvement in Deaf people in the daily addresses – the failure to provide BSL interpretation consistently and inclusively – it is apparent that the Prime Minister's Office cannot have complied with its obligations under the duty.

It seems clear from the documents in the public domain that there has been no due regard to the needs of deaf people and inadequate regard to the impact of the decision not to provide BSL English Interpreting on them.

#### Failure to make reasonable adjustments/indirect discrimination

In addressing the Nation, the Prime Minister's Office is exercising a public function and/or providing a service and/or facility. There is an obligation in accordance with s.20(5) of the Equality Act 2010 to take reasonable steps to provide an auxiliary service (in this case a BSL interpreter) where it would avoid the substantial disadvantage of disabled people compared to non-disabled people – in this case the disadvantage that Deaf people experience arising from an inability to follow oral briefings delivered by the PM's office as compared to those without hearing impairments. There has been a failure to take such steps and thus a breach of the duty resulting in detriment, contrary to section 29(6) and/or 29(2)(c).

#### **Action Required**

Please confirm that the Prime Minister will ensure that a BSL English Interpreter will be in attendance, in person at every Address to the Nation specifically as a matter of urgency, in respect of the Coronavirus pandemic.

Should these assurances not be provided, proceedings will be brought by way of judicial review challenging the failure to comply with the PSED and /or failure to make reasonable adjustments in the exercise of a public function/provision of a service. The purpose of the proceedings would be to obtain a declaration that the Government's actions are unlawful and will include an Order compelling the Government to make its communications accessible by the means suggested above.

## **Documentation and Information Sought**

Please set out and (where documentation exists) provide copies of:

- Equality Impact Assessments relating to the provision of information at the Prime Minister's Live Addresses to the Nation.

## **Interested Parties**

Interested parties include:

- a. The Royal Association for Deaf People;
- b. National Registers of Communication Professionals
- c. Deaf4Deaf Ltd
- d. UK Council on Deafness
- e. Action Deafness
- f. The Limping Chicken Blog
- g. National Union of British Sign Language Interpreters;
- h. The Deaf LGBTIQA project
- i. SignHealth
- j. Stop Changes to Access to Work #StopChanges2AtW
- k. Association of Sign Language Interpreters
- l. British Deaf Association

Should they wish to become a formal interested party in this litigation, they should let us know.

## **Details for Reply and Service**

Fry Law  
Globe Works  
Penistone Road  
Sheffield  
S6 3AE

Solicitor: Chris Fry  
Reference: CJF  
[chris.fry@frylaw.co.uk](mailto:chris.fry@frylaw.co.uk)

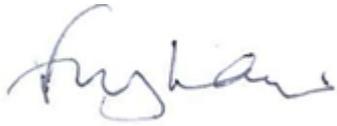
## **Response Date**

4.00pm on 31/03/2020. Our client very much hopes that this is not a case where litigation is necessary. He would much rather that the matter was resolved in a less public arena.

Should you wish to meet to discuss this face to face to try and resolve the matter, then we would be happy to do so. We know of BSL English Interpreters who would be very happy to assist.

We look forward to hearing from you.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Chris Fry', written in a cursive style.

**Fry Law**

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