



## Policy Brief: For Dancers

The **InVisible Difference: Dance, Disability and Law** project is an Arts and Humanities Research Council-funded project that is exploring issues confronted by professional disabled choreographers and ownership and authorship of their work.

### Project Overview

Running from January 2013 to December 2015, ours is an interdisciplinary partnership between academics in Higher Education and artists working in the creative industry. Members of the project are: Professor Sarah Whatley, Coventry University; Professor Charlotte Waelde, University of Exeter; Dr Abbe Brown, University of Aberdeen; Dr Shawn Harmon, University of Edinburgh; Dr Karen Wood and Hannah Donaldson, research assistants; Mathilde Pavis and Kate Marsh, Doctoral candidates and dance artist Caroline Bowditch. During the course of our research we are conducting qualitative research with disabled choreographers and dancers, including Caroline Bowditch, Claire Cunningham, Marc Brew, Chisato Minamimura, and others. We also have strong links with Candoco dance company and other independent disabled dancers.

### Introduction

The development and application of human rights and disability laws is a key part of the InVisible Difference project. The results of our research, and proposals for policy change, are being shared as the project progresses, including through other Position Briefs, including the UN Convention on the Rights of Persons with Disabilities<sup>1</sup>.

The aim of this Position Brief is to make the dance community aware of the legal tools of human rights and disability laws, and to suggest how they might be pursued in a range of situations, some of which are being explored by the project: from seeking the availability of performance and rehearsal space to the search for funding, and from the need for more inspirational leaders and peer groups to the application of copyright law when dancers with different bodies recast an established piece of dance.

### Discussion

Human rights treaties include rights relevant to dance. International and European treaties have rights to expression<sup>2</sup> and to share in cultural life<sup>3</sup> and rights against discrimination<sup>4</sup>. There is also the dedicated international Convention on the Rights of Persons with Disabilities, which includes a right against discrimination on the basis of disability, a right of equal access to the physical environment, and rights to freedom of expression and participation in cultural life.<sup>5</sup> Accordingly, people who wish to dance should be able to do so – irrespective of their bodies. Bringing this about is not, however, straightforward.

The treaties confer rights on individuals (e.g. dancers) against states (e.g. UK). The UK has taken some useful steps: the Unlimited programme<sup>6</sup>, the Arts Council of England's Disability Equality Scheme<sup>7</sup> and

<sup>1</sup> See generally briefing papers section on Publications section of project website, <http://www.invisibledifference.org.uk/research/publications/>

<sup>2</sup> Article 10 European Convention on Human Rights ("ECHR"), article 11 EU Charter of Fundamental Rights ("EU Charter"), and article 19 International Convention on Civil and Political Rights ("ICCPR")

<sup>3</sup> Article 15(1)(a) International Convention on Economic Social and Cultural Rights ("ICESCR").

<sup>4</sup> Article 14 ECHR, Article 21 EU Charter, Article 2(2), and Article 2(1) ICCPR

<sup>5</sup> Article 3(b), 4, 5, 9, 21, 30 Convention on the Rights of Persons with Disabilities

<sup>6</sup> <http://weareunlimited.org.uk/>





Creative Scotland's Dance Agent for Change<sup>8</sup>. Yet if a dancer considers progress to be inadequate, they cannot make a direct application to the local court to require the state to act to ensure that their rights are respected. Rather, international committees monitor a state's respect for its obligations, on the premise that if a state is considered not to have met its obligations, the state will change its practice when this is pointed out, and inquiries can be made into the behaviour of states<sup>9</sup>. Dance and creativity have not yet received significant attention in the monitoring process or in the reports made by states. The InVisible Difference team have criticized the Initial State Report made by the UK<sup>10</sup> for its lack of reference to dance and disability, or attention to cultural inclusion<sup>11</sup>. Under the specific Disability Convention, a dancer could also make an individual complaint to the international body about the UK's (in)action,<sup>12</sup> but there have not yet been any examples of this.

Given the focus on states, the dancer cannot complain directly to other individuals or companies who are involved (say, choreographer, manager of performance space with no ramp or operator of development programme). In the UK, however, human rights arguments can be made on a more individual level if a dispute is before a court on another basis, say a different piece of legislation, and human rights can influence the decisions made<sup>13</sup>. Possible bases for the action might be a copyright dispute between a dancer with a different body and the choreographer of the original piece of work<sup>14</sup>, or a complaint based on the Equality Act 2010.

The equality legislation means that providers of services to the public must make reasonable adjustments to ensure that their services are equally available to all<sup>15</sup>. One possibility for dancers could be the argument that accessible performance space must be made available, or spaces on a development programme are to be allocated to people with disabilities, together with appropriate support, for example an interpreter. If the court route is taken, ultimately this could lead to applications being made by dancers to the European Court of Human Rights in Strasbourg, arguing that the UK has not met its obligations to them<sup>16</sup>.

Court actions are slow and expensive. Further, the treaties do also include human rights which might support the position of those the dancer wishes to challenge (say, right to property or copyright of the choreographer of a work which a disabled dancer would like to remake<sup>17</sup> or the right to property of the manager of a dance space who argues that they cannot afford ramps)<sup>18</sup>. This, together with likely arguments about what is reasonable adjustment (does it include the provision of interpreters to ensure that dancers without speech can participate fully in a leadership programme?) means that the outcome cannot be predicted. Nonetheless, a well-resourced and robust legal team and a determined litigant could bring about an outcome which could benefit all dancers with different bodies.

<sup>7</sup> [http://www.artscouncil.org.uk/publication\\_archive/disability-equality-scheme-2010-13/](http://www.artscouncil.org.uk/publication_archive/disability-equality-scheme-2010-13/)

<sup>8</sup> <http://www.scottishdancetheatre.com/index.php?pid=126>

<sup>9</sup> Committee on Rights of Persons with Disabilities <http://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx>, Human Rights Committee re ICCPR, <http://www.ohchr.org/en/hrbodies/ccpr/pages/ccprindex.aspx> and Committee on Economic, Social and Cultural Rights <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>

<sup>10</sup> Accessible via

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fGBR%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fGBR%2f1&Lang=en)

<sup>11</sup> A submission has been made to the Minister for Disabled People by Charlotte Waelde on behalf of the InVisible Difference Team challenging this and calling for more engagement with and acknowledgement of activities ongoing in dance and disability in the UK. A copy can be found at <http://www.invisibledifference.org.uk>

<sup>12</sup> See [www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx)

<sup>13</sup> Section 3 Human Rights Act 1998

<sup>14</sup> Waelde, C. Whatley, S. and Pavis, M., *Let's Dance! – but who owns it?*, (2014) 36 European Intellectual Property Law Review 217 and Whatley, S. Waelde, C. Harmon, S. and Brown, A., *Validation and Virtuosity: Perspectives on Difference and Authorship/Control in Dance*, Dance Research Journal (2014, forthcoming) – details of these can be found at <http://www.invisibledifference.org.uk/research/publications/>

<sup>15</sup> Section 29 and Part 9 Equality Act 2010

<sup>16</sup> Once national avenues are exhausted. See <http://www.echr.coe.int/Pages/home.aspx?p=applicants>

<sup>17</sup> Protocol 1 article 1 ECHR, article 17(2) EU Charter, article 15(1)(c) ICESCR

<sup>18</sup> Protocol 1 article 1 ECHR





There is also another role for human rights. Alongside court proceedings, they can contribute to more collaborative activity, to advocacy and thought leadership. The language of rights, rather than merely the language of desire or fairness, worked effectively in arguments for new exceptions to copyright in respect of some print impairments<sup>19</sup> - though it had less success in the UK objections to the bedroom tax<sup>20</sup>, disability assessments<sup>21</sup> and cuts to the Access to Work scheme<sup>22</sup>. Activist steps could lead to a wider, more engaged approach to dance, culture and creativity for all, without the need for a court to tell people what to do.

## Conclusions

Human rights and disability laws provide useful opportunity for dancers, which can be pursued through activism and through the courts. Together, they can contribute to important changes in approach.

## Recommendations

1. The following recommendations can combine to deliver change and create a new environment.
2. When applying for funding, services and leadership opportunities: refer to human rights and disability laws and the rights and responsibilities they create.
3. If you involved in a copyright dispute: make human rights arguments.
4. If you are unhappy about decisions of service providers, and have time and money: raise a court action against a provider or funder on the basis of the UK Equality Act and include human rights arguments.

If you are unhappy about decisions in UK courts and have time and money: consider application to European courts and international bodies.

If you are unhappy about specific instances of the dance and disability landscape in the UK: consider an individual complaint to the Committee on the Rights of Persons with Disabilities.

Needless to say, only an introduction to these points can be provided here.

If you would like further details, do feel free to contact Dr Abbe Brown, University of Aberdeen, [abbe.brown@abdn.ac.uk](mailto:abbe.brown@abdn.ac.uk). We should also be delighted to share your experiences of these (and other) avenues on our website.

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<sup>19</sup> The Marrakech Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled 2013

<sup>20</sup> See Disability Rights UK webpage “The Bedroom Tax” <http://www.disabilityrightsuk.org/bedroom-tax>

<sup>21</sup> Details of disability assessments at UK Government webpage <https://www.gov.uk/government/policies/simplifying-the-welfare-system-and-making-sure-work-pays/supporting-pages/introducing-personal-independence-payment> and comment in The Independent (18 February 2014 ) <http://www.independent.co.uk/news/uk/politics/atos-itself-not-fit-for-work-disability-benefit-test-provider-may-finally-have-contract-terminated-9136353.html>

<sup>22</sup> See eg <http://dpac.uk.net/>

