



## Policy Brief: For Supporters of Dance

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.

Human rights and disability laws provide valuable tools to enhance opportunities for those who would like to enjoy, observe and critique dance – whatever their bodies. Recommendations are made here as to how these legal tools can be pursued.

This brief introduces human rights and disability laws, and how they can be used to address key challenges faced by observers and supporters of dancers with disability. Development and application of these laws is a key part of the InVisible Difference project, as it explores, for example, the availability of performance and rehearsal space, the place of disabled dance in cultural heritage, and the need for a critical language and discourse. The results of our research, and proposals for policy change, are being shared as the project progresses, including through other Position Briefs.<sup>1</sup>

The aim of this Position Brief is to share opportunities and to suggest how they might be pursued.

### Discussion

Human rights treaties include rights relevant to the enjoyment and support of 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 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> This suggests that people who would like to observe and enjoy the dance of others, who may or may not have their own disability, should be able to do so. Bringing this about is not, however, straightforward.

<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) ICESCR, and article 2(1) ICCPR

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





The treaties confer rights on individuals (e.g. critics and fans) against states (e.g. UK), rather than against other individuals (e.g. manager of performance space with no ramp). The UK has taken some useful steps, for example, the Unlimited programme,<sup>6</sup> the Arts Council of England's Disability Equality Scheme<sup>7</sup> and Creative Scotland's Dance Agent for Change.<sup>8</sup> Yet if a person considers progress to be inadequate, they cannot make a direct application to court to require the state to act to ensure that their rights are respected. 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, it will change its practice. Individuals can make applications to the monitoring body of the Convention on the Rights of Persons with Disabilities if they consider that the UK has not fulfilled its obligations to them. It is also possible for inquiries to be launched against a state.<sup>9</sup> Finally, a supporter of dance could make an individual complaint to the international body about the UK's (in)action,<sup>10</sup> but there have not yet been any examples of this. Notwithstanding these opportunities and obligations, dance and creativity have not yet received significant attention in the international human rights framework. The InVisible Difference team has criticized the Initial State Report made by the UK<sup>11</sup> for its lack of reference to dance and disability, or attention to cultural inclusion.<sup>12</sup> More promisingly, the Human Rights Act 1998 provides some opportunities for human rights arguments to be made on a more individual level, if a dispute is before a court on another basis.

This could be on the basis of disability legislation. The Equality Act 2010 requires providers of services to the public to ensure that their services are equally available to all, and reasonable adjustments must be made to ensure that this is the case.<sup>13</sup> The key question is the meaning of reasonable. A person who wishes to enjoy a dance performance but who is unable to access performance space because there is no ramp or lift, could raise a court action against the provider. The provider might argue that, say, a new ramp is not reasonable. An interesting argument would be that given previous failure to provide opportunity for people with disabilities, particularly in respect of dance, there should be more support now, even if this imposes a burden on space providers. A final point is that because of the Human Rights Act, decisions made in that case must be consistent with human rights;<sup>14</sup> and in addition to the rights which favour the observer, there are also rights to property which would cover the provider of the space.<sup>15</sup> Complex decisions would need to be made in these court actions. Ultimately, this could lead to an application being made to the European Court of Human Rights in Strasbourg.<sup>16</sup>

Court actions are slow and expensive and as no such actions have been raised in the past, 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 supporters of dance. Human rights could also contribute to more collaborative activity, to advocacy and thought leadership. The language of rights, rather than merely

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

<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> <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx>

<sup>11</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>12</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>13</sup> Section 29 and Part 9 Equality Act 2010

<sup>14</sup> Section 3

<sup>15</sup> Protocol 1 article 1 ECHR

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





the language of desire or fairness, has worked effectively as a policy tool, for example in arguments for there to be new exceptions to copyright in respect of some print impairments.<sup>17</sup> This approach had less success, however, when used in the objections in the UK to the bedroom tax,<sup>18</sup> to disability assessments<sup>19</sup> and to cuts to the Access to Work scheme.<sup>20</sup> More generally, 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 are relevant to those who support, critique and share in dance. There are challenges in using these arguments but progress can still be made to create a more equal and legitimate environment.

## Recommendations

1. Contribute to consultations using human rights and disability arguments and laws, and stress the relevance of dance to international human rights reporting.
2. Raise awareness of elite performance by dancers with different bodies and use the language of human rights to entrench the legitimacy of this work.
3. 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.
4. If you are unhappy about decisions in UK courts and have time and money: consider application to European and international bodies.
5. If you are unhappy about the UK dance framework, consider an individual application to the Committee on the Rights of Persons with Disabilities.

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. September 2014

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<sup>17</sup> The Marrakech Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled 2013

<sup>18</sup> See Disability Rights UK webpage “The Bedroom Tax” <http://www.disabilityrightsuk.org/bedroom-tax>

<sup>19</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>20</sup> See eg <http://dpac.uk.net/>

