Policy Brief for venues: Providing Space. Obligations and Approaches to Dancers with Different Bodies

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.

There are obligations under human rights and disability laws for providers of rehearsal and performance space to make them available to all dancers. One of the key challenges faced by dancers with different bodies, and those who enjoy observing, sharing and analyzing their performances, is the limited availability of such space. This brief introduces the laws, and makes practical recommendations for providers of these spaces.

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.[1]

This Positon Brief introduces the legal tools of human rights and disability laws, the obligations they impose on providers of dance space, and suggests possible future action. This should ensure that the obligations of providers are met, the rights of dancers and supporters are met, and help providers to move towards new opportunities which can arise from more embracing of accessibility in dance.

Discussion

There are many human rights which are relevant to providers of dance space, to dancers with different bodies and to their supporters. International and European treaties set out rights to expression,[2] to share in cultural life,[3] and against discrimination.[4] The dedicated Convention on the Rights of Persons with Disabilities includes a right against discrimination on the basis of disability,[5] to equal access to the physical environment,[6] to freedom of expression[7] and to participation in cultural life.[8] So all people who

[1] See Brief for Royalties v Public Funders on Publications section of project website, http://www.invisibledifference.org.uk/research/publications/
[2] 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")
[3] Article 15(1)(a) International Convention on Economic Social and Cultural Rights ("ICESCR")
[4] Article 14 ECHR, article 21 EU Charter, Article 2(2) ICESCR, and article 2(1) ICCPR
[5] Article 3(b), 4, 5 Convention on the Rights of Persons with Disabilities ("CRPD")
[6] Article 9 CRPD

wish to dance, or who would like to observe and enjoy the dance of others, should be able to do so. What does this really mean for providers of dance space - particularly in times of financial strain, and when there is also a right to property which would apply to the business of the space provider?[9]

The treaties discussed impose obligations on states (e.g. the UK). This does not mean, however, that providers of dance space can ignore human rights. In the UK, the Human Rights Act 1998 means that arguments based on human rights can be made on a more individual level, if a dispute is before a court on another basis.[10] For providers of dance space, this could arise 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.[11] For example, a performer who is unable to access performance space because there is no ramp or lift, could raise a court action against the provider. The key question is the meaning of reasonable. The provider might argue that, say, a new ramp is not reasonable. No court has yet considered an issue like this in respect of dance. 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. If the court found in favour of the dancers, space providers could be ordered to pay financial compensation.

This burden might seem unfair. Further, dealing with such an action would be expensive and a distraction from the important activities carried out by space providers. Yet in parallel with this, complaints and court actions might also be being made by dancers and their supporters against the state and funders, including at international monitoring level[12] and at the European Court of Human Rights.[13] So responsibility does not lie only with space providers – but it cannot be ignored.

Viewed more positively, there are important examples of venues embracing dance and accessibility, leading to new opportunities and events. Valuable examples of constructive engagement are the Tramway in Glasgow, where the Gathered Together inclusive dance festival was held in August 2014,[14] the SouthBank Centre in London, where the Unlimited Festival was held in September 2014,[15] and the Step Forward initiative at City Moves in Aberdeen.[16]

Conclusions

Providers of dance space must have regard to human rights and disability laws. These laws create an environment within which all those who wish to dance and engage with it must be able to do so. Changes might seem costly and unnecessary; but from one perspective, this is likely cheaper than engaging in a court action; and from a more positive perspective, taking this step enables dance spaces to engage with more with a thriving and growing dance community.

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[7] Article 21 CRPD
[8] Article 30 CRPD
[9] Protocol 1, article 1 ECHR and article 17 EU Charter
[10] Section 3
[11] Section 29 and Part 9 Equality Act 2010
[12] Eg Committee on Rights of Persons with Disabilities http://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx
[13] Once national avenues are exhausted. See http://www.echr.coe.int/Pages/home.aspx?p=applicants
[14] http://www.tramway.org/events/Pages/Gathered-Together.aspx
[15] http://www.southbankcentre.co.uk/whatson/festivals-series/unlimited
[16] http://danceaberdeen.com/about/

Recommendations

1. When making decisions regarding service provision, have regard to human rights and disability laws when considering the appropriate balance to be struck in each case – and be aware of the risks if you do not.

2. When applying for your own funding: refer to human rights and disability laws and seek funding, possibly through new sources, to increase opportunities for dancers with different bodies and for your space.

If you would like further details, do feel free to contact Dr Abbe Brown, University of Aberdeen, abbe.brown@abdn.ac.uk. We should also be delighted to share your experiences of these avenues on our website. September 2014