# **IN CONFIDENCE**

**This is a judgment to which the Practice Direction supplementing CPR Part 40 applies. It will be handed down on Thursday, 16th September 2021 at 9.45 a.m. remotely at The County Court at Central London, 3rd Floor, Thomas More Building, Royal Courts of Justice Strand London WC2. This draft is confidential to the parties and their legal representatives and accordingly neither the draft itself nor its substance may be disclosed to any other person or used in the public domain. The parties must take all reasonable steps to ensure that its confidentiality is preserved. No action is to be taken (other than internally) in response to the draft before judgment has been formally pronounced. A breach of any of these obligations may be treated as a contempt of Court. The official version of the judgment will be available from the County Court Office once it has been approved by the judge.**

**The Court is likely to wish to hand down its judgment in an approved final form. Counsel should therefore submit any list of typing corrections and other obvious errors in writing to District Judge Avent by email by 4.p.m. on Wednesday, 15th September 2021, so that changes can be incorporated, if the judge accepts them, in the handed down judgment.**

**IN THE COUNTY COURT AT CENTRAL LONDON CASE NO : E89YJ500**

**B E T W E E N :**

1. **MS SALLY REYNOLDS**
2. **MS VICTORIA NELSON**
3. **MS SARAH CASSANDRO**

**Claimant**

**and**

**LIVE IN THE UK LIMITED**

**(IN Creditors Voluntary Liquidation)**

**Defendant**

**Before District Judge Avent**

**(Sitting with an Assessor, Ms Jill Tombs)**

**1st & 8th July 2021 (heard remotely by CVP & MS TEAMS)**

Ms Catherine Casserley of Counsel (instructed by Messrs Fry Law, Solicitors) appeared for the Claimant

The defendant did not appear.

Pursuant to CPR PD 39A no official record need be taken of this Judgment and copies of this version as handed down may be treated as authentic.

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**JUDGMENT**

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**Introduction**

1. As a matter of law, this is a claim for discrimination pursuant to the Equality Act 2010 (“the Act”).
2. As a matter of reality the case is concerned with an important and rather fundamental issue as to what access and, in turn, the extent of such access, deaf people might have under the Act in order to experience and participate in large open-air concerts otherwise attended by hearing people.
3. The claim has been brought by three mothers, Ms Sally Reynolds, Ms Victoria Nelson and Ms Sarah Cassandro (“the Claimants”), all of whom are profoundly deaf and who wished to take their respective eight-year-old daughters to an open-air concert at the South of England Showground to see the girl band, Little Mix, perform on 1st September 2017.
4. The issue of access manifests itself in the alleged failure by the defendant, Live in the UK Limited (“Live”) to provide a British Sign Language (“BSL”) interpreter for the entirety of the time that they were at the concert and particularly with regard to the to support groups, the Germain Sisters and Ella Eyre.
5. It is said that because Live was a service provider for the purpose of section 29 of the Act that this amounted to a failure to make a reasonable adjustment pursuant to sections 20 and 21 or, alternatively, that there was indirect discrimination under section 19 of the Act. Further, within that failure it is alleged that all the claimants were consequently placed at a substantial disadvantage and suffered detriment.
6. Live accept that they were service providers but deny liability on the basis that they say that they made a series of adjustments above and beyond those required by law and thus made reasonable adjustment which enabled the claimants and their daughters to have a positive experience of the event. They deny any indirect discrimination.
7. However, Live, who at the material time was known as LHG Live Ltd, went into a Creditors Voluntary Liquidation (“CVL”) on 12th August 2020. Unlike certain other forms of insolvency the legislation does not impose any automatic stay upon existing litigation although the liquidator, any creditor or contributory of the company might apply to the Companies Court for a stay pursuant to section 112 Insolvency Act 1986.
8. That has not occurred in this instance and, moreover, on 5th August 2020 the insolvency practitioners engaged by Live indicated that they were content for the claim to continue albeit that they would not fund any continued defence. After consideration the claimants decided to continue with their action and for the court to give a judgment after hearing evidence.
9. This has resulted in the somewhat unusual situation where such evidence has not been tested by cross-examination. Nonetheless, the CVL took place after the exchange of witness statements and disclosure and so the matters and facts which Live would have wished to raise, had they participated in the trial, are available and known. I am also satisfied that whilst there are, of course, some evidential differences between the parties, on the main areas there is really no dispute as to the facts at all. The differences between the parties on the pleadings is as to how those facts should be interpreted when set against the applicable law. Accordingly, in my view, this case does not involve or require any lengthy or difficult fact-finding exercise. The facts speak for themselves; it is whether they then give rise to any discrimination that is in issue.
10. I am also conscious that this case is important to the claimants and also those in the deaf community; to wit the decision to proceed to seek a judgement against an insolvent defendant. I have found that some of the claimants’ collective evidence needs to be treated with a degree of caution in parts because it has been prepared or given with a particular outcome in mind. Some of the witness statement evidence is opinion as to what witnesses think should have happened in this instance and/or what ought to happen in the future. It needs to be said, of course, that the outcome must be confined within the facts of this particular case.
11. Subject to the burden of proof provisions at section 136 of the Act the claimants must still however establish on the balance of probabilities a *prima facie* case of discrimination against Live.
12. In terms of the evidence all three claimants made witness statements and gave oral evidence. In addition, they relied upon evidence from two further witnesses, a Miss Marie Pascall (“Miss Pascall”), a director of a company called Performance Interpreting Ltd, and a Miss Stephanie Raper (“Miss Raper”) (the signer for the Little Mix main act) by way of both witness statements and oral evidence.
13. Live relied upon the witness statements of their owner and Chief Executive Officer prior to the CVL, Mrs Liz Hobbs (“Mrs Hobbs”) and those of her husband, Mr Rupert Hobbs, Mr Lee Bowers, the Finance Director of Live, and a Miss Lisa Halley (respectively, “Mr Hobbs”, “Mr Bowers” and “Miss Halley”).
14. Variously, all these witness statements exhibited a number of documents and, in addition, there were various surveys, publications and academic articles although not allied to or advanced by any expert evidence. The only expert evidence for which permission had been given was in respect of Audiology Reports for each of the claimants by a Mr O’Driscoll, a Consultant Clinical Audiologist.
15. Against those considerations I can now turn to the facts.

**The Facts**

1. The tickets for the concert were purchased on 25th June 2017. At that time it was common ground that the only band or group on the bill was Little Mix. Whilst there may have been an expectation that there would be a support act this was far from settled. As Mrs Hobbs put it, paragraph 5 of her witness statement:

“…… At this time there was still no indication from the artist that they required any support acts, nor was any announcement made to the public identifying support acts or indeed that there would be any support acts at all”.

1. There is no evidence to suggest that any of the claimants had sought to ascertain before the purchase of the tickets whether there would be a qualified BSL interpreter at the event and certainly it seems that the tickets gave no such indication. To this end Ms Reynolds wrote to Mrs Hobbs on 26th July 2017 by email the relevant parts of which said:

“We are three deaf adults, attending with three very excited girls! ……

It would be really helpful to know what provision there is for people with disabilities for the concert, and whether we have purchased the correct tickets. It might be helpful for you to know the following about our access needs:

* we would need to be able to see the stage clearly.
* A heads up regarding the schedule, with the song titles in order would be helpful.
* We also use British Sign Language, if you have not made any provision, then I am happy to signpost you in this area……”

1. At this time also Ms Reynolds emailed Performance Interpreting Ltd, a company which specialised in the provision of interpreters the music and entertainment sector to ascertain what assistance Ms Pascall might be able to offer.
2. Mrs Hobbs had acknowledged Ms Reynolds’ enquiry on 29th July 2017 and on 1st August that year a Mr Joe Sharphouse, Head of Sales and Marketing, emailed the substantive reply in these terms:

“For all of our concerts we have accessible tickets available which are sold on a first-come first-served basis which for this show have been on sale via Ticketmaster. I believe these tickets have now sold out, but essentially offered you the opportunity to purchase a carer ticket alongside a full priced ticket. I could look to see if there is any extra space we could allocate In the disabled viewing area for you if this would help? The area is situated to one side of the stage with a great view.

For a set list, it's not something we get hold of until the show day unfortunately.

For provision for any sign language support, unfortunately this is not something we are able to facilitate for this particular show. We will however take it on board for future shows and also raise it at the concert promoters conference to see if it is indeed something that should be introduced for all events of this nature”.

1. In fact, it went a little further than this because as Mrs Hobbs explained at paragraph 9 of her witness statement:

“Having worked in the outdoor live music industry for over 20 years, this was the first time that a request of this type, relating to deaf customers had been received”.

1. On 2nd August 2017 Ms Pascall wrote a long letter of introduction to Mrs Hobbs. Although written on the basis that Ms Reynolds had contacted them for guidance it might have been more accurately perceived as a pitch for her business, setting out her company’s requirements and indicating that a proposal could be sent. She said:

“I appreciate you have been liaising with Sally to find a solution to her access request. We would like to offer our services to be able to enable you to facilitate this request for Sally to be able to access the performance via a sign language interpreter”.

1. On 4th August 2017 Ms Reynolds emailed her response to Mrs Hobbs in which she observed that:

“I have to admit that I was rather surprised to get the email from Joe this week saying that a Sign Language Interpreter could not be provided, this is in breach of the Equality Act 2010. Performance Interpreting have an excellent reputation throughout the UK for providing British Sign Language Interpreters, this ls why I approached them regarding this provision…….

…I would also appreciate on behalf of the group, if you could confirm that a Sign Language Interpreter will be booked for the Little Mix concert it will enhance our experience, and enable us to be able to follow along with any talking from the band in between songs”.

1. There is no evidence that Ms Reynolds knew Ms Pascall or Performance Interpreting (or vice versa) before this event although paragraph 9 of the Defence puts this in issue. The concern of Live appears to have been that this correspondence was a mechanism to promote the services of Performance Interpreting or even Ms Reynolds herself who worked as a disability advisor.
2. On the following Wednesday, 9th August 2017 Mr Sharphouse replied as follows:

“Further to earlier communications, I can confirm the offer for additional carer tickets. These can be used should you wish to provide your own personal interpreter in the disabled area. We will also provide a set list as requested to assist further which we will be able to provide on show day……

However, sorry to disappoint you, but a decision has been made and no interpreter will be provided for this performance”.

1. Ms Reynolds replied a few hours later in these terms:

“Thank you for your reply, and confirming that 3 carers tickets will be offered, along with placing all of us onto the disabled viewing list. We do appreciate this.

Please could you kindly explain why a British Sign Language Interpreter cannot be provided. I have asked for this access provision on two occasions. It would be helpful for us all to understand the rationale behind this decision by the Liz Hobbs Group, given that this is reasonable adjustment provision under the Equality Act 2010.

I have cc'd Gideon Feldman into this email, he works for Attitude is Everything, they are a leading disability charity working with promoters and venues, in improving deaf and disabled people's access to live music. He may be able to offer useful advice.

<http://www.attitudeisevervthing.org.uk/>”.

1. Within a quarter of an hour Mr Feldman himself became involved, emailing Mr Sharphouse to say that he would be “very interested in finding out the reasoning behind the provision you have offered and what you have not felt able to offer in relation to meeting the access requirements of this group of Deaf customers”.
2. Mr Sharphouse replied shortly afterwards by email to say that:

“Through the offer of the additional carer tickets, and offer to upgrade tickets to an area adjacent to the stage to ensure you have best available sight access, we have tried to be as accommodating as possible. Both these come at significant cost to us as promoters. The offer of additional carer tickets at our cost, can enable the party to supply your own personal interpreter/s if required.

No allocation or provision has been made for this service as, until this year, we have never had a request of this kind. If you wish to provide us with definitive legislation that details that we as promoters have a legal requirement to provide an interpreter at our concerts, then we will obviously abide by that legal requirement…..”

1. On 9th August 2017 at 1:04 p.m. Ms Reynolds also wrote to the Director of the South of England Showground, Mr Iain Nicol, a very similar letter to that which she had written to Mrs Hobbs on 26th July. Mr Nicol simply referred her back to Live and Mr Sharphouse.
2. On 17th August 2017 Ms Reynolds wrote what was effectively a letter before action to Mrs Hobbs setting out the short history of her attempts to secure an interpreter for the concert, pointing out various parts of the Act and concluding that:

“The adjustment which I consider that you have failed to make is to provide a British Sign Language Interpreter. I have made this request three times, and no reasonable explanation has been offered”.

1. On 18th August 2017 Ms Pascall sent an email to Mrs Hobbs in which she explained why what had been offered was not adequate or sufficient with the purpose that she wanted the “Hobbs Group [to] fully understand the difference between the access a Carers Ticket provides and the access a Professional qualified BSL Performance Interpreter provides”.
2. However, there was no movement from Live or Mrs Hobbs over and above that which had previously been offered and on 29th August 2017 Ms Reynolds wrote a further letter in which the tone had quite obviously changed. She wrote in these terms:

“This is now the last chance for Liz Hobbs and Ian Nicol to minimise legal liability (for which you are both jointly and severally liable) for disability discrimination under the Equality Act 2010 for failure to make reasonable adjustments.

If a BSL/English interpreter is not booked via Performance Interpreting for the Little Mix Concert for 1st September 2017 at South of England Event Centre, South of England Showground and confirmed to myself and Performance Interpreting by 5pm on 31st August 2017 then I will issue a claim for failure to make reasonable adjustments”.

1. Mrs Hobbs replied late that afternoon saying this:

“Hello Sally

This is my first day back in the office from my holiday. I haven't read your first email yet, but will do so in due course.

Please can you send me a copy of the specific and legal legislation where we are required to provide this service?

Thanks

Liz”

1. Of course, by now the concert was only two days away and so it is perhaps not surprising that Ms Reynolds then contacted solicitors. On 30th August 2017 Fry Law, solicitors, wrote a long letter to Mrs Hobbs amongst other things indicating that an application would be made for injunctive relief if Live were unable to confirm that a BSL interpreter would be in attendance at the concert.
2. Indeed, proceedings were issued in the County Court at Sheffield on 31st August 2017 with a return date for 1st September 2017. However, at about 7 p.m. on the 31st August 2017 Mrs Hobbs emailed Ms Reynolds to confirm that an interpreter had been booked through Performance Interpreting for the concert.
3. On that day solicitors instructed by Live, Raftermarsh, replied to Fry Law. In many ways the Defence adopts the points made and so it is sensible to set out the material parts of that letter as follows:

“Firstly we wish to put on record that your "11th hour" threats are unwarranted and clearly not in the spirit of the Civil Procedure Rules. Your client has been aware of this issue for some time and has had enough time to instruct you, rather than two days prior to the Concert. Further as you are more than aware Liz Hobbs has only recently returned from annual vacation where upon she has sought to deal with this matter swiftly.

You have stated that your client is profoundly deaf within the meaning of S 6 Equality Act 2010 ("the Act") yet you have respectfully failed to deliver any medical evidence to back up any assertions made. For the avoidance of any doubt we do not dispute that your client may well fit within the S6 of the Act definition however we expect that if you do intend to bring court proceedings that reasonable evidence of such disability would be adduced.

We accept that LHG Live may be regarded as "service provider" under the definition in S29 of the Act however it is the obligation to make "reasonable adjustments" upon which this matter turns. As such it this issue which we shall concentrate on.

Need to make reasonable adjustments.

Specifically you refer to the following:

1. the "need to see the stage clearly" this matter has been dealt with appropriately, your client having been moved to an area adjacent to the stage and would clearly amount to a reasonable adjustment;

2. "a copy of the schedule of song titles" this is clearly an unreasonable request, as the artist has the be free to deliver a performance as it feels fit. Artist's hardly ever reveal their proposed "set list" to any person (save internally to its support crew) prior to delivery of the performance, as this would stifle the artists creativity and the ability to perform different songs based on the artists interaction with the crowd. That said however LHG Live have requested a copy of the "set list" which may either be supplied or not entirely at the artist's discretion. In the event that such a list is supplied we do expect an undertaking from your client that the running order of the concert is not disclosed (save as amongst the party of three deaf individuals attending the concert) to any other person; and

3 "the supply of BSL English interpreter" in the circumstances and given that the concert is an open air concert the logistics and cost involved in making such an adjustment is unreasonable. In order to provide such for an outdoor event of this size with an interpreter would mean:

a) the installation of another stage to house the interpreter;

b) the installation of further spotlights in order to light such person;

c) the installation of further video screens in order to capture the translation being provided, which is not possible at this late stage;

d) further camera operators in order to film any translation, not possible at this late stage;

e) extra security (including but not limited to barriers, extra security personnel); and

f) other logistical considerations involved in an outside broadcast of the interpreter.

Simply put the Concert is not designed to deliver such considerations without creating circumstances that would potentially cause extra health and safety considerations nor is it logistically or commercially viable. It is on this basis and on advice that we concluded that the provision of an interpreter at this event would far outweigh the standard of "reasonable adjustments".

That said however, due to the fact that Liz Hobbs personally wishes to deliver an enjoyable experience for every person attending the Concert, Liz Hobbs is personally making adjustments, which we believe are by far over and above any requirements set out in the Act, in order that an interpreter will be present at the Concert. This offer is made without any admission of liability to either your client or others.

Moving on to your further requirements:

An apology. No, as above our client feels that is has gone over and above any requirements in the Act to provide a reasonable experience for your client. LHG Live have gone to considerable extra expense to make provisions for your client and we feel that Liz Hobbs should receive personal thanks from your client.

A Donation to Attitude Is Everything. Again no, our client is incurring substantial additional costs, currently £1400 in providing the interpreter as set out above at 3.

Compensation. No, it is believed that LHG Live has made all "reasonable adjustments" to accommodate your client and has expended substantial cost in making the provisions set out above over and above the "reasonable adjustments" threshold.

Payment of reasonable legal fees. No, as above………

Given the above LHG Live has made all reasonable, viable, logistical and commercial attempts to make "reasonable adjustments" to provide for your client AND have gone over and above the "reasonable adjustment" threshold to supply an interpreter on the basis of accepting no liability to provide an interpreter in the relevant circumstances….”

1. This is a somewhat surprising letter to my mind. Not only was it a thoroughly uncompromising letter both in substance and tone but, given that it would have been written upon instructions, it gave an insight into the position of Live and Mrs Hobbs and their misunderstanding or misconception of what was required of them.
2. It is perhaps material to note that Ticketmaster, through whom the official (as opposed to secondary) tickets had been sold had sent an email to all official ticket holders on 30th August 2017 which said:

“The show’s on Friday, so the event organisers have been in touch with some important details they’ve asked us to pass on”.

1. Within the following five A4 pages was an Admissions Policy which stated amongst other matters:

“British sign language interpreter will not be available for this performance”.

1. There was a flurry of email exchanges on 1st September 2017, the day of the concert, as to whether, in light of the signer now being provided, the carer tickets which had been offered were still required. They would not. All three claimants attended the concert with the younger daughters and arrived at the Showground at about 4:30 p.m. All three complained that it was very busy, the queues were long and there was very little if any provision made for disabled people particularly as they were unable to hear voice announcements. Ms Reynolds sought out a Lisa Henton, Lives’ Ticketing and Box Office Manager who informed her that everyone would have to queue and there was no priority for disabled persons although it appeared that wheelchair users were able to make their way to the front of the queues.
2. As Ms Nelson noted at paragraph 16 of her witness statement it seems it was first necessary for ticketholders to go through and clear security before they were then able to enter the disabled viewing area.
3. The support acts started at about 6:30 p.m. with Little Mix coming on stage at about 9 p.m. I have no specific evidence as to how long the supporting acts were on stage but they would not have been on continuously. It is clear that Ms Nelson and Ms Cassandro went to the bar at some point for drinks.
4. The complaint of the claimants was that until the interpreter, Ms Raper, came on stage at about 9 p.m. for the Little Mix set they were unable to follow the performances or announcements so that if, for example, the support acts were engaging with the audience they had no means of understanding what was said.
5. Similarly, they had no idea what songs were being sung because they did not have access to the lyrics. This lack of access meant that they were unable to participate in the event as they could have done and perhaps, more importantly, were not able to interact with or share the experiences with their daughters. I deal with this later.
6. The interpreter engaged for the Little Mix set was Miss Raper. All three claimants variously agreed that she was “very good”, “performed especially well” and was “fantastic in her interpretation”. This was all the more impressive given that she had had very little preparation time. Ms Reynolds also noted (paragraph 49 of her witness statement) that several other deaf audience members had said how much they had enjoyed Miss Raper’s interpretation as well, and in that sense, Little Mix had been an immersive experience for them.
7. However, all three claimants considered that there had been a failure to make reasonable adjustments both in terms of Miss Raper’s engagement only being an eleventh hour concession and having spent at least two and a half hours of the support acts, as well as their remaining time at the concert overall, without there having been communication at all. Accordingly, they intended to seek redress.
8. These proceedings were subsequently issued on 14th June 2018 although had been received by the Court within the six month limitation period under section 118 of the Act.
9. It seems that in early September 2018 Fry Law had served Notice of Third Party Funding but had not provided any information in that regard. Consequently, on 10th September 2018 Raftermarsh had written seeking further information, not least the identity of any funder and the latest accounts of any such entity. They said:

“Given that you have failed to supply any confirmation as to the identity of the proposed third party, we can only assume that there is no third party or that Fry Law are undertaking the conduct of this matter on some sort of conditional fee basis.

As you have failed to provide any information as to funding of this matter our client has real concerns over who will pay it's costs should there be an adverse decision against the Claimants.

As such we now request the following as a matter of urgency:

1. the identity of any third party who is proposing to fund the litigation against LHG Live Limited;
2. the latest accounts of any such entity together with profit and loss for recent months;
3. in the event that no such third party is funding this matter, full disclosure of any funding arrangements between Fry Law and the Claimants;
4. in the event that there are no such arrangements between Fry Law and the Claimants, then a full breakdown of each and every Claimant's assets including without limitation, disclosure of ownership of property, savings and income; and
5. confirmation that you will pay into Court or provide evidence of payment into an escrow account (in favour of Our Client and to be released immediately following any costs order made in favour of Our Client) no less that £100,000.00 in order to cover Our Clients estimated costs.

In the event that you have failed to comply with the above requests (as may be applicable) by close of business on 24 September 2018 we will be making an application for Security for Cost without reverting to you further”.

1. I shall return to this letter later.

**The Defendant’s Position**

1. Having set out the position of the claimants regarding matters it is appropriate to now set out that which Live had carefully and thoroughly set out in the witness statements of Mrs Hobbs and her husband. As one might expect, the bringing together of upwards of 15,000 or more people to an open air concert in a safe, secure and organised environment, as well as the provision of the infrastructure for the concert itself, presented a number of logistical and practical challenges. The planning therefore was lengthy and detailed and needed to take into account a wide range of views represented by the police, fire and rescue services, the NHS, local residents and the various interested departments of the Local Authority, as well as the venue itself.
2. The Little Mix Tour in 2017 was to start on 29th June and finish on 1st September and the group was to perform at venues other than the South of England Showground. Accordingly, the planning was not just confined to this particular concert. I need not rehearse the evidence of Mr Hobbs in relation to what was involved in an Event Management Plan but it was complex and detailed and would be six months in its formulation. In turn each Event Management Plan formed part of the Master Tour Management Programme.
3. In this instance, planning commenced on 12th January 2017. By March that year the original plans for the construction of the stage, backstage, bronze and gold standing areas and specific seating areas had been completed and they were subsequently approved and signed off by, amongst others, the Safety Advisory Group.
4. The first press release regarding the Little Mix concert on 1st September 2017 was on or about 22nd March that year. No support acts were mentioned and nor was there any press which suggested that there would, in fact, be any support bands. The simple reason was that no discussions regarding any support acts had taken place with Little Mix’s management. This remained the case, as I have noted, when the claimants purchased their tickets.
5. Mrs Hobbs also made the point throughout the correspondence which I have highlighted that at no point was there reference to any support acts because none had been booked or announced. She dealt with this point at paragraph 16 to 17 of her witness statement when she said that:

“16………Neither the Claimant or their representative from PIL ever mentioned support acts, because none were confirmed. I believe therefore that given timings of confirmation of these acts, a matter of days before the show, that it could not be deemed reasonable that a BSL interpreter be appointed for all of the artists appearing at the Concert. I further believe that for the reasons set out below, the provision of a BSL interpreter for both support acts was impossible to facilitate and beyond the reasonable adjustments required by law.

17. Whilst dealing with this point, I also wish to state that it was and is my belief that the Claimants were expecting a BSL interpreter solely for the Little Mix performance. I refer to the email from Marie Pascal dated 18 August 2017 at 16:08 which states that Ms Raper will be available to interpret "*the Little Mix performance*”……”

1. She also made the point that there would, in the event, have been insufficient time for an interpreter to properly get to grips with the support acts. At paragraphs 26 and 27 of her witness statement she noted:

“26. In relation to the Germain Sisters, who were at the time a new and unknown band from Australia, the same issues as set out above arise. The songs were new, artist written tracks and the point of them coming to support Little Mix was to launch a career in the UK. At the time of the second support artist being announced any BSL interpreter would have had less than a week to learn, rehearse and perform their set at the Concert. Flying to Australia to do that would not have been viable.

27. Accordingly, the provision of a BSL interpreter for the support acts at this Concert was simply impossible for the service provider and for any BSL interpreter themselves. Nor would it be reasonable or practicable going forwards to expect other concert promoters to provide such a service”.

1. And, at paragraph 33 of the witness statement she observed:

“I acknowledge and appreciate the fact that many more headliners and larger acts have interpreters these days. To provide the services we did provide took considerable organisational effort and commercial sacrifice. To provide services in connection with the Support Acts or indeed any further services beyond those which were provided to the Claimants and their families on this occasion was simply not possible because of the time available”.

1. Mrs Hobbs was also reticent to pay a commission charge of 30% to Ms Pascall. She objected because it was “excessive across the whole of the music industry”. Once Ms Pascall had waived that commission Mrs Hobbs said that “the interpreter was then immediately booked on 31st August 2017”.
2. Mr Hobbs’ witness statement set out, at paragraph 20, that building infrastructure for Miss Raper next to the stage was not a simple task. As he explained:

“….There are a number of matters which need to be addressed prior to positioning the stage for the signer - sight lines to the stage for an audience of over 15,000 people, sightlines to the IMAG screen to stage right, pit depth to allow security the correct pit size to operate safely, speaker placement to not cause discomfort to the signer, cable runs to the stage for the audio monitor required by the signer, lighting positions so the signer can be seen, and stage height so the signer can be seen. We also have to consider accessibility to the stage for the signer, truck space to get equipment to site, crew to load and install the stage sound and lighting required, and scheduling of the install into the daily schedule. I attach a number of photographs taken of the main stage and the signer's stage (both before and after the Concert) at Exhibit RDH 4. As can be seen from the photographs the positioning of structure can be complicated and I cannot guarantee that at all outdoor venues such a stage could be constructed and positioned as we eventually managed to achieve with this one”.

1. At paragraph 21 of his witness statement Mr Hobbs also set out the constituent costs of that construction which was put at £1750. The financial commitment made by Live was expanded upon by Mr Bowers who was their Finance Director between September 2014 and January 2019. He was in charge of the production budgets for the shows. He explained at paragraph 6 of his witness statement that:

“Initial cost budgets are agreed with the artist agent / management when calculating a fee proposal with the artist both in regards to the guaranteed amount paid to the artist as well as determining their share of any box office revenue over and above an agreed estimate break-even box office revenue point. Once these budgets are agreed any increase in costs are purely the responsibility of the promoter”.

1. At paragraph 10 he then went on to state that:

“The promoter is only able to profit once the event gets to almost sell-out. This show did not get to those levels. The additional costs associated to the provision of the interpreter services and infrastructure were purely the responsibility of the promoter. The overall losses suffered by the promoter are currently in the region of £42,000 in relation to this single concert”.

1. However, Mr Bowers did not provide any figures in respect of the income from this particular concert or give any indication that the series of concerts overall might have made a profit. Nor was there any evidence of how ticket prices might have been set.
2. Mrs Hobbs made the point that both she and her company were supportive and inclusive with regard to disabilities, having involved herself in breast cancer charities and one for children with autistic spectrum disorders over some period of time. Indeed, the tenor of her evidence was that she was hurt by the suggestion that she had failed or refused to assist anyone with disabilities. She concluded, at paragraphs 45 and 46 of her witness statement, in these terms:

“45. It is my honest belief that LHGL went over and above any obligations to make reasonable adjustments for the attendance at the Concert of the Claimants. Having replaced invalid tickets with much better upgraded tickets at no cost to the Claimant, having changed the infrastructure of the whole area surrounding the stage, emergency exits, back stage and providing the Little Mix set list, ensuring all public messages could be read on screen, a BSL interpreter at considerable cost and expense to the Defendant, the First Claimant, following the Concert systematically went to media outlets to complain about me personally and Liz Hobbs Group Limited, neither of whom were the service provider. Such actions having caused both damage to my personal long-standing good reputation in the live music industry and considerable stress to me personally, through a very difficult personal time.

46. I consider that the services we provided were not only lawful but exemplary. I feel that it is very unfortunate that this action has been bought by the Claimants. I have attempted to have meetings with the British Deaf Association, Attitude is Everything and others in order to try and agree some form of charter that will aid both the music community and the deaf community moving forward. Since this case has been brought, multiple meetings have been cancelled and none of these organisations will communicate with me, as result of this action, to find and agree some form of best practice moving forward. I am and remain committed to delivery of the highest standards of performance entertainment to an concert goers and fans regardless of their ability or disability. However the specific demands made by the Claimants were both unreasonable and completely impractical”.

**The Claimants’ Disability**

1. All the claimants are profoundly deaf. All of them are able to lipread to some extent and they rely upon British Sign Language as a means of communication. Ms Reynolds wears hearing aids whilst both Ms Nelson and Ms Cassandro each have hearing aids and also cochlear implants. Despite these aids none of them are able to hear in the sense that a hearing person would discern sound.
2. For the purpose of this litigation, and pursuant to the court’s permission to rely upon it, an expert medical report was prepared in relation to each of the claimants by Dr Martin O’Driscoll a consultant at the Manchester Royal Infirmary.
3. In light of paragraph 4 of the Defence which noted that all the claimants “could lipread to some extent” and that Ms Nelson and Ms Cassandro had cochlear implants (the implication being that thereby they might or would have been able to follow the concert without an interpreter) Dr O’Driscoll was asked the specific question as to whether and, if so, to what extent, hearing aids, cochlear implants, lipreading skills and BSL interpreters would be likely to affect the ability of the claimants to access the full event of an outdoor concert such as Little Mix.
4. Dr O’Driscoll did not examine any of the claimants but was provided with recent audiogram’s and pre-and post-cochlear test and assessment reports. Based on these he reached the following conclusions:
   1. In relation to Ms Reynolds he noted:

“4.2. Claimant’s Hearing Impairment

The hearing test results for Sally Reynolds from 02/12/2009 to 23/06/2017 are very similar and show no clinically significant differences between the two tests. Sally Reynolds has a profound sensori-neural hearing loss in both ears. She has no recordable hearing for high frequencies to the maximum levels that can be tested by clinical audiometers.

A sensori-neural hearing loss is caused by damage to the tiny sensory structures in the inner ear (cochlea) that are responsible for converting sound vibrations into nerve signals that are conducted to the hearing centres of the brain. The sensory structures in the inner ear consist of thousands of tiny hair-like structures (called hair cells) that move in response to sound waves and their movements generate nerve signals.

In the case of a profound hearing loss, the majority of these tiny sensory hair cells in the inner ear will be damaged or missing. There is no treatment that will replace or repair these hair cells. Therefore, the damage to the inner ear for Sally Reynolds resulting in a profound sensori-neural hearing loss is permanent.

4.3 Claimant’s Level of Disability

Normal conversational speech is at a level of between 55 and 70 dBHL at distance of 1 metre. Loud shouting is at a level of about 85 and 95 dBHL at a distance of 1 metre. Therefore, with a profound hearing loss in both ears and without the use of hearing aids, the claimant will be unable to hear any normal conversational speech and will only be able to detect some low frequency components of speech (vowel sounds) which need to be shouted at close distance. She would not be able to hear any consonant sounds (even if shouted). Detection of vowel sounds shouted at close distance will not provide sufficient levels of discrimination to understand any speech without help with lipreading.

The claimant would not be able to hear or understand speech on a telephone, would not be able to hear or understand speech on the television and would require the use of subtitles. The claimant would not be able to hear or understand speech or recognise music played on the radio. She would not be able to hear announcements in public areas and would need to rely on lipreading, written communication or sign language to understand what people are saying.

Lipreading, alone will not convey all the meaning in speech. The majority of speech sounds are difficult to lipread or are not visible at all. The ability to lipread is affected by how well the speaker moves their mouth, the distance they are from the lipreader (ideally within a couple of metres), how visible and well lit the speaker’s face is and by anything covering their lips such as facial hair. Research has shown that, on average, young adults can only understand 12.4 % of words in sentences using lipreading alone with no sound (2).

The profound hearing loss that is present in both ears for the claimant Sally Reynolds will have a substantial and adverse effect on her ability to carry out normal day to day activities and in my clinical opinion she meets the test for disability as described in the Equality Act 2010, section 6.

* 1. As for Ms Nelson he found at 4.2 of her report that:

“The hearing test results for Victoria Nelson shows that she has a severe to profound sensori-neural hearing loss in both ears. The hearing thresholds are severe in the low frequencies and profound in the mid to high frequencies. She has no recordable hearing for the highest frequencies at the maximum levels that can be tested by clinical audiometers”.

And at paragraph 4.4.1 that:

“In the case of the hearing levels for Victoria Nelson, she has no recordable hearing for the higher frequencies. This would indicate that she has no functional sensory hair cells in her inner ears for these frequencies – she has what are called dead regions for these frequencies within her inner ears. No amount of amplification with a hearing aid in her left ear will enable her to hear and make functional use of the higher frequencies.

The claimant does have severe hearing threshold levels for the lower frequencies in the left ear and amplification of these with a hearing aid will allow some access to hearing low frequency sounds. A hearing aid in the left ear will allow the claimant to have better detection of the low frequency vowel sounds in speech and some awareness of low pitch environmental sounds and low pitch or bass notes of music. In the pre-cochlear implant report of 2011 she was able to understand 45% of words in sentences presented in sound alone with no lipreading.

Therefore, amplification and detection of low frequencies alone will not allow sufficient clarity to understand all speech through hearing alone and the claimant will need help with lipreading to understand speech. She will have significant difficulty understanding speech on the telephone with hearing aids, and would require subtitles on the television to understand what was being said. In addition she will understand no more than 45% of speech on the radio. Even with the use of hearing aid, she will need to rely on lipreading, written communication or sign language to understand speech”

He continued at paragraph 4.4.2.:

“…..amplification with a hearing aid in the left ear and use of a cochlear implant in the right ear did not allow sufficient clarity to understand all speech through hearing alone and the claimant will need help with lipreading to understand speech. She will have significant difficulty understanding speech on the telephone and would require subtitles on the television to understand what was being said. In addition she will understand no more than 47% of speech on the radio. Even with the use of both a hearing aid on the left and a cochlear implant on the right, she will need to rely on lipreading, written communication or sign language to understand speech.

In my clinical opinion, the use of a cochlear implant and hearing aid provides limited functional improvement for the claimant and that with her hearing aid and cochlear implant her hearing will continue to have a substantial and adverse effect on her ability to carry out normal day to day activities…..”

* 1. In respect of Ms Cassandro he found:

“The hearing test results for Sarah Cassandro shows that she has a severe to profound sensori-neural hearing loss in her right ear and a profound sensorineural hearing loss in her left ear. The hearing thresholds are severe in the low frequencies and profound in the mid to high frequencies for the right ear. She has no recordable hearing for the highest frequencies in either ear at the maximum levels that can be tested by clinical audiometers”.

He went on to conclude that:

“In my clinical opinion, the use of a cochlear implant and hearing aid provides limited functional improvement for the claimant and that with her hearing aid and cochlear implant her hearing will continue to have a substantial and adverse effect on her ability to carry out normal day to day activities”.

1. Overall, Dr O’Driscoll concluded in relation to all three claimants that having regard to the availability of hearing aids, implants and lip reading skills, nonetheless:

“…..a BSL interpreter with appropriate skills in interpreting music will be the most appropriate and effective mode of communication to enable [them] to access the most from an outdoor concert”.

1. These conclusions were given practical emphasis by the written and/or oral evidence of all the claimants. Ms Reynolds had said at paragraphs 2 to 5 of her witness statement that:

“2. Hearing aids cannot restore normal hearing, they only help to amplify certain sounds, such as environmental sounds. Amplifying sounds doesn't always help because sensorineural deafness often involves distortion of what is heard even with powerful hearing aids.

3. I rely heavily on lipreading. However, lipreading can be affected by some of the following factors; people covering their mouths or obscuring their faces, standing with a light or window behind them, accents, and facial hair such as beards. Approximately 30% of lip shapes are visible on the lips. Other lip shapes are inferred from the movement of the jaw, neck, chin, cheeks, expression, eyes, and context. Ideal lipreading distance is between 1- 2metres, and only when conditions are good and with one other person. We were seated

approx. 30 metres away from the performers on the main stage.

4. I use Registered Qualified British Sign Language (BSL) Interpreters frequently for work, hospital appointments and school visits. This enables me to fully access information and to make informed decisions.

6. Being profoundly deaf has a huge impact on my everyday life. I am unable to access information indirectly such as the radio, I only watch TV programmes that are subtitled, I can only attend scheduled subtitled films at the cinema that are shown on average once a week and at obscure times. I am unable to hear public safety announcements”.

1. Ms Nelson explained that her cochlear implant had resulted in tinnitus in certain circumstances and she therefore would only wear it when the noise output was low and decibel levels are at an appropriate and comfortable level, which would not be the case at a concert. She explained at paragraph 4 of her witness statement that she is heavily reliant upon lipreading and continued:

“…….However, this is dependent on sufficient light, clear facial movements, still (not moving) head movements, direct face to face and no facial hair or teeth deformities. This can cause eye fatigue and severe concentration fatigue. From a distance, lipreading is virtually impossible as I have astigmatism in both eyes which gives me refractive errors giving myself blurred or distorted vision , This isn't corrected by corrective glasses that I wear which are used mainly for reading and lipreading in short distances. I often get eye strain, headaches, squinting and eye irritation so I do not try to lip read over long distances to reduce the eye fatigue”.

1. In terms of music she told me in her oral evidence how she experienced this which was that she could ‘hear’ rhythm and bass but that it was impossible to hear any words and she had no conception of what a tune might be. It would also not be possible for her to identify a particular instrument. However, when bands were interpreted they had an element of “coming alive”.
2. Ms Cassandro outlined the position at paragraph 3 and onwards of her witness statement in these terms:

“3. It is a common misconception that Cochlear Implants/hearing aids restores hearing in the way that spectacles can help blind/faulty vision. Cochlear Implants/hearing aids DO NOT restore hearing. The Cl/aids is a sound amplifier and even then, it can only amplify sounds within a certain range as I am too deaf to hear most sounds, particularly high frequency sounds essential for speech. A deaf adult with a cochlear implant, will often still need to rely on lipreading, subtitles or BSL Interpreters.

4. It follows that the Cl is a TOOL It does not cure and will never cure my Deafness. An effect of a Cl is dizziness and tinnitus. In addition, the environmental sounds overload my brain and it can be very painful to my eyes. My deafness is life-long and will get progressively worse due to the syndrome. I have supplied a copy of my Audiologist's report as part of my disclosure.

5. I have to depend on understanding someone by lip-reading, this is very difficult. I am not able to lipread all people very well - it ls impossible to have a conversation by lipreading because most of the speech sounds are at the back of the throat, e.g. 'g, h, e,' so it can make nonsense of words. For example, I might say ‘yous' for 'news' or I might lipread, 'use' instead of 'news'.

6. Very many high frequency sounds are lost to me. My audiogram shows hearing loss in the high frequencies. For example, communication would be heard as "-ommu---atio-" which is why born deaf people speak the way they.do. Accents and beards are often a huge obstacle.

7. I use Registered Qualified British Sign Language (BSL) Interpreters (RSLI) frequently for work, hospital appointments and school visits. This enables me to fully access information and to make informed decisions.

8. Being profoundly deaf has a huge impact on my everyday life. Whenever I am in situations with hearing people who cannot sign, I find those times very stressful and extremely tiring. I often take my Cl out at this point because my brain has an overload of noises that makes my head spin and causes dizziness. I need bright lighting to alleviate some of the exhaustion, when lip-reading. I also have to physically tell people to move to the right spot, e.g. if they are standing in front of a window then all I see is a dark silhouette and cannot see their facial expressions. I cannot hear or detect the tone of their voices so I am always trying to work out if a hearing person is pleased or unhappy about something, This is very stressful to judge. Deaf people show their emotions on their faces”.

**Deaf Associations**

1. Although this case concerns these three particular claimants, it is helpful in my view to be able to put matters into context, because the Act is aimed at disabilities generally and in the context of this case would be relevant to all deaf people not just the claimants.
2. The British Deaf Association Report (1st Edition March 2014) estimated that there were between 89,000 to 125,000 deaf people in England. However the Association contended that once families of deaf people (including hearing members) were taken into account they estimated that there were approximately 156,000 sign language users in the UK. At paragraph 1.4 of the Report it observed that:

“The number of BSL users exceeds those of known Gaelic language speakers (approximately 60,000) and is approximately one quarter the number of Welsh Speakers (over 500,000)”.

1. The purpose of this comparison was to introduce a sense of proportion because whilst 156,000 people may not sound a great deal it is, nonetheless, a significant and important number. By way of further comparison, the ethnic breakdown of population of England and Wales from the 2011 census (see: Population of England and Wales - published 1 August 2018; last updated 7 August 2020)[[1]](#footnote-2) included 447,000 Bangladeshi, 393,000 Chinese and 165,000 mixed white/black African. I do not conceive that any of these ethnicities are considered in any way to be insignificant.
2. The point, for the purpose of this judgment however, to be made is that BSL is a mainstream means of communication for a significant section of society. This was acknowledged by Lord Dyson at paragraph 2 in the case of *Finnigan v Chief Constable of Northumbria Police [2013] EWCA Civ 1191* when he said that:

“BSL is a language in its own right which is regularly used by a significant number of people. It is a visual-gestural language with its own vocabulary, grammar and syntax”.

**The Available Options**

1. If it is accepted that these claimants required a BSL interpreter (as was ultimately provided) it is necessary to look at and consider the options which were available in this regard. It might be appreciated that the BSL translation for a concert is somewhat different from a normal translation. Not only will the interpreter have to convey the lyrics in time with the music but they will also have to bridge the gap between an artist and the audience by interpreting the artists style and the intention of the song. That might be achieved in part through dance and demonstration of the instruments being played.
2. Ms Raper was to my mind an impressive witness who was able to achieve a high level of interpretation at this concert. However, it was clear that this required a deal of forward planning and practice and Ms Raper indicated that she would usually begin preparing for concert about one month before the date of the event. Ideally, that would involve the provision of a playlist and obviously lyrics. Depending upon the length of the proposed set and the content it might then take up to 50 hours to translate into a performance.
3. In this instance it was perhaps fortuitous that Ms Raper had already been booked to provide BSL interpretation at a Little Mix concert at another venue in November 2017. Accordingly, when she was contacted about a week before this particular concert she was not unfamiliar with the songs of the band although her booking was not actually confirmed until 24 hours beforehand.
4. The month’s notice is important for two reasons: firstly, that if the venue is aware that an interpreter will be attending they are then able to construct a disabled viewing area in a way which is able to accommodate and facilitate the interpreter and thereby bring them much closer and nearer to those who need their translation which, in turn, improves and enhances the experience. It also enables the interpreter to have the lyrics in front of them and to enable them to liaise with the promoters as to lighting et cetera. Ms Raper said that sometimes she would be given ‘in ear’ devices so that she could hear the live vocals from the artistes on the stage. In this instance, a small dais had to be constructed side of the stage.
5. Secondly, it means that after about three weeks the main act will more or less have been learnt which would leave the remaining week to add grace notes to the performance. It also means that as is often the case, where support acts are only identified at relatively short notice, that last week can then be used to work up the translation and lyrics of support acts to a reasonable standard but not to the detriment of the main act.
6. That said, I was satisfied on the evidence that leaving matters to within a window of less than seven days before a concert before naming support acts would create considerable, if not extremely difficult, challenges to a BSL interpreter to prepare an adequate performance. I had specifically asked Ms Reynolds whether she would complain if the lack of preparation time in such circumstances subsequently led to a substandard interpretation. She replied that it was not about quality but the right to have access, but it seems to me that there is a threshold below which access becomes very difficult, if not impossible.
7. The problem, it appears, however is not necessarily the quality of translation but the supply of the numbers of people like Ms Raper who were available to undertake such interpretations. Ms Pascall indicated that her company is presently the only commercial concern offering such interpretation services and out of about 200 BSL interpreters on their books they barely have some 15 to 20 for music events. That pool may in reality be even smaller because a potential interpreter might not be available or may not be interested in the genre of music being offered. The time necessary to prepare for each concert also, in turn, limits an interpreter’s availability to undertake further like engagements.
8. Nonetheless, with forward planning, it is clear that it would be possible in theory to provide a BSL interpreter at a concert of this magnitude and provide a competent and satisfactory translation of the main act and a reasonably passible translation of any support act even if, in the latter event, there would have to be one or two songs, which as Ms Pascall put it, were done “on the fly”.

**The Legal Framework**

1. The Act establishes and sets out a series of statutory torts by reference to certain protected characteristics, prescribed circumstances and prohibited conduct. All three must be present for discrimination to arise and, if not, then whatever act may have taken place it cannot amount to discrimination.
2. One such protected characteristic is disability which is governed by section 6 of the Act and, so far as material, Schedule 1. Section 6 states:

“(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.”

1. Schedule 1, paragraph 5 clarifies that:

“(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—

1. measures are being taken to treat or correct it, and

(b) but for that, it would be likely to have that effect”.

1. As regards prescribed circumstances the Act, by virtue section 29(1) and (2), provides that:

“1) A person (a “service-provider”) concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.

(2) A service-provider (A) must not, in providing the service, discriminate against a person (B)—

(a) as to the terms on which A provides the service to B;

(b) by terminating the provision of the service to B;

(c) by subjecting B to any other detriment.

1. The prohibited conduct complained of in this case is either a failure to make reasonable adjustment contrary to section 20 and 21 of the Act (which by virtue section 29(7) applies to service providers) and indirect discrimination pursuant to section 19.
2. So far as material the present case is concerned with the ‘third requirement’ in section 20(5) which provides that:

“The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid”.

1. Reference in that subsection to “substantial” means more than minor or trivial (see: section 212(1) - General Interpretation) so it is a low threshold.
2. Section 20(6) then goes on to provide that:

“Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format”.

1. Once a failure to comply with any of the three requirements is found then under section 21 it amounts to a failure to comply with the duty to make reasonable adjustments and, in turn, constitutes discrimination.
2. Finally, in this regard, I should mention Schedule 2, paragraph 2(2) which provides that:

“For the purposes of this paragraph, the reference in section 20(3), (4) or (5) to a disabled person is to disabled persons generally”.

1. This provision means that the service provider has a duty to consider disabled persons generally and it is not confined to the specific claimant in a specific case. This is referred to as the “anticipatory duty” and in this case it assumes a particular importance.
2. Once discrimination is deemed to have arisen this then engages the provision of section 136 of the Act by which the burden of proof then shifts to the alleged discriminator to justify that discrimination.
3. Section 19 of the Act governs the position regarding indirect discrimination in these terms:

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim”.

1. Again, at subsection (d) it will be seen that the burden of proof shifts to the alleged discriminator.

**The Code of Practice**

1. The ‘Services, Public Functions and Associations: Statutory Code of Practice’ (“the Code”) is guidance issued by the Equality & Human Rights Commission as to the interpretation and workings of the Act. It has a statutory provenance arising from the Equality Act 2006 but its importance is stressed by section 15(4) of that act which provides:

“(4) A failure to comply with a provision of a code shall not of itself make a person liable to criminal or civil proceedings; but a code—

(a) shall be admissible in evidence in criminal or civil proceedings, and

(b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant”.

1. Chapter 7 of the Code deals with disabled persons and reasonable adjustments. There are to my mind two important tenets which are set out in the introduction at paragraph 7.3 and 7.4 as follows:

“7.3

The duty to make reasonable adjustments requires service providers to take positive steps to ensure that disabled people can access services. This goes beyond simply avoiding discrimination. It requires service providers to anticipate the needs of potential disabled customers for reasonable adjustments.

7.4

The policy of the Act is not a minimalist policy of simply ensuring that some access is available to disabled people; it is, so far as is reasonably practicable, to approximate the access enjoyed by disabled people to that enjoyed by the rest of the public. The purpose of the duty to make reasonable adjustments is to provide access to a service as close as it is reasonably possible to get to the standard normally offered to the public at large……….”

1. It is therefore quite clear that the purpose behind the legislation is to afford and, so far as possible to achieve, equality of access so that a disabled person has the opportunity to enjoy and participate in the provision of services as they would if they were not disabled.
2. The nature of the anticipatory duties dealt with at paragraph 7.20 onwards the material parts being as follows:

“7.20

In relation to all three areas of activity (services, public functions and associations) the duty is anticipatory in the sense that it requires consideration of, and action in relation to, barriers that impede people with one or more kinds of disability prior to an individual disabled person seeking to use the service, avail themselves of a function or participate in the activities of an association.

7.21

Service providers should therefore not wait until a disabled person wants to use a service that they provide before they give consideration to their duty to make reasonable adjustments. They should anticipate the requirements of disabled people and the adjustments that may have to be made for them. Failure to anticipate the need for an adjustment may create additional expense, or render it too late to comply with the duty to make the adjustment. Furthermore, it may not in itself provide a defence to a claim of a failure to make a reasonable adjustment.

7.22

Because this is a duty to disabled people at large, it applies regardless of whether the service provider knows that a particular person is disabled or whether it currently has disabled customers, members etc.

7.24

Service providers are not expected to anticipate the needs of every individual who may use their service, but what they are required to think about and take reasonable steps to overcome are barriers that may impede people with different kinds of disability. For example, people with dementia, mental health conditions or mobility impairments may face different types of barriers.

7.25

Disabled people are a diverse group with different requirements – for example, visually impaired people who use guide dogs will be prevented from using services with a ‘no dogs’ policy, whereas visually impaired people who use white canes will not be affected by this policy. The duty will still be owed to members of both groups.

7.26

Once a service provider has become aware of the requirements of a particular disabled person who uses or seeks to use its services, it might then be reasonable for the service provider to take a particular step to meet these requirements. This is especially so where a disabled person has pointed out the difficulty that they face in accessing services, or has suggested a reasonable solution to that difficulty”.

1. Paragraph 7.27 then deals with how long the duty to make reasonable adjustments lasts in these terms:

“7.27

The duty to make reasonable adjustments is a continuing duty. Service providers should keep the duty and the ways they are meeting the duty under regular review in light of their experience with disabled people wishing to access their services. In this respect it is an evolving duty, and not something that needs simply to be considered once only, and then forgotten. What was originally a reasonable step to take might no longer be sufficient, and the provision of further or different adjustments might then have to be considered”.

1. Paragraph 7.30 sets out, without intending to be exhaustive, some of the factors which might be taken into account when considering what is reasonable, as follows:

“• whether taking any particular steps would be effective in overcoming the substantial disadvantage that disabled people face in accessing the services in question;

• 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”.

1. Paragraph 7.31 and 7.32 next explain that the larger the financial resources of a service provider (for which the entirety of their business dealings are likely to be taken into account) the more likely it is that they would be expected to make adjustments with a significant cost as opposed to a provider with fewer resources.
2. For the sake of completeness I should mention paragraph 7.35 and 7.36 which largely emphasise the purpose of a reasonable adjustment but also make an important point as follows:

“7.35

The purpose of taking the steps is to ensure that disabled people are not placed at a substantial disadvantage compared with non-disabled people when using a service. Where there is an adjustment that the service provider could reasonably put in place and which would remove or reduce the substantial disadvantage, it is not sufficient for the service provider to take some lesser step that would not render the service in as accessible a manner.

7.36

Similarly, a service provider will not have taken reasonable steps if they attempt to provide an auxiliary aid or service which in practice does not help disabled people to access the service provider’s services”.

1. It is to be noted that at paragraph 7.47 the provision of a sign language interpreter is an example of an auxiliary aid or service which provides additional support or assistance to a disabled person.
2. Of course, the failure to make a reasonable adjustment has to result in a “substantial disadvantage” to the disabled person and paragraph 7.13 of the Code makes clear that:

“7.13

The disadvantage created by the lack of a reasonable adjustment is measured by comparison with what the position would be if the disabled person in question did not have a disability”.

1. Finally, mention should be made paragraph 5.10 which also addresses the concept of ‘disadvantage’ and ‘detriment’ in these terms:

“5.10

‘Disadvantage’ is not defined by the Act. It could include denial of an opportunity or choice, deterrence, rejection or exclusion. The courts have found that ‘detriment’, a similar concept, is something that a reasonable person would complain about so an unjustified sense of grievance would not qualify. A disadvantage does not have to be quantifiable and the service user does not have to experience actual loss (economic or otherwise). It is enough that the person can reasonably say that they would have preferred to be treated differently”.

**The Claimants’ Submissions**

1. The submissions made on behalf of the claimants by Ms Casserley were carefully set out and articulated in her comprehensive Skeleton Argument. I need not rehearse that fully here.
2. The starting point was to identify the status of the parties. In respect of the claimants all of them, because of their hearing loss, quite clearly fell within the meaning of disability as formulated in section 6 of the Act and Schedule 1. As for Live, paragraph 5 of the Defence had admitted that it was a service provider in that it was a producer of concerts and events which clearly then brought it within the obligations of section 29.
3. Ms Casserley noted the contention by Live that the claimants were in fact only concerned with the Little Mix set and not the support acts. In her submission it was the entirety of the concert that was relevant and not just the specific performance of Little Mix that was relevant and so the “service” provided extended to access for the both the Little Mix and the support acts.
4. The duty to make reasonable adjustment applies to a service and thus, by reference to section 20, Live, in Ms Casserley’s submissions, were under a duty to make a reasonable adjustment because without an auxiliary service deaf people generally would be placed at a substantial disadvantage in accessing the concert.
5. If the court was satisfied that the duty was engaged then the burden of proof shifted to Live to show that it would not be reasonable to have made the adjustment.
6. In that regard, Ms Casserley made clear that she did not consider Live would have been able to demonstrate that, even if they had participated in the trial and been represented, for any number of reasons. First, and foremost, she relied upon the anticipatory duty which, had it been considered, would likely have meant that the costs of BSL interpretation and the infrastructure could all have been absorbed both in terms of finances and time.
7. Secondly, the fact that Live might have made other adjustments was not determinative. Being nearer the stage, with upgraded tickets and tickets for carers would not have enabled any of the claimants to access the performance of the support acts in a way which they would have done had a BSL interpreter been available. Notwithstanding support acts might have been announced at short notice the evidence of Ms Pascal and Ms Raper was clearly that this could be overcome or at least ameliorated if interpretation for the main act was arranged in time.
8. Looked at in the round and taking into account the nature of the event, the resources of Live and all the circumstances, the submission of Ms Casserley was that Live were in breach of its duties under the Act pursuant to section 20(5) and section 21.
9. Having established a breach of the general class of persons with hearing loss it was then, finally, necessary to consider whether these claimants have suffered detriment in breach of section 29(2) which, Ms Casserley submitted, the evidence clearly demonstrated.
10. Ms Casserley also noted at paragraph 74-78 inclusive of her Skeleton Argument her position for contending that the claim for indirect discrimination, pleaded as an alternative to the failure to make reasonable adjustments, was made out, particularly if a comparison was drawn with the circumstances in *Finnigan* which concerned the arrest of a deaf criminal. I deal with this particular submission below.

**Analysis & Conclusions**

1. It is now four years since these events occurred but the intensity with which the claimants gave their evidence demonstrated that they still feel their lack of access to this concert keenly. It has taken rather longer than otherwise would have been the case to come to trial but nonetheless the claimants have persevered.
2. It is also the case, to my mind as I previously indicated, that they have each approached this case through the lens of it in some way being to some extent a test case and I apprehend that their evidence in some parts hankered to this aim rather than perhaps concentrating on the facts of this case. Ms Nelson, for example, expressed the hope in her evidence that the case would result in changes being made.
3. Ms Casserley injected realism into the issues by acknowledging at the outset of her submissions that this case was not about what each concert venue will produce, or must, or should, do in the future but that this judgment must relate to the circumstances of this particular case. That said, there will doubtless be analogous situations although because of the range of event providers, what might be reasonable for one to provide may not be reasonable for another.
4. It is perhaps sensible to start by considering the basics. Firstly, I find as a fact that all three claimants were, and are, disabled within the meaning of the Act. This is not only clear from the evidence of the claimants themselves but through the audiology reports in respect of each of them. They each have an impairment which has a substantial and long term adverse effect on their ability to carry out normal day to day activities.
5. This was a point which appears never to have been conceded, or admitted, by the defence or, indeed subsequently. A Notice to Admit Facts was served but I am not clear if it was ever answered. If no concession or admission was made then, in my view, it should have been. Secondly, it is equally the case by virtue of Live’s admission, that I am also satisfied that they were the service provider for the purpose of section 29.
6. Thirdly, it is helpful to reiterate the rationale for requiring service providers to make reasonable adjustments. As paragraph 7.4 of the Code sets out it is to approximate access enjoyed by disabled people to that enjoyed by the rest of the public. That has been explained in any number of judgments over the years but it is sufficient to refer to just one of them. As Lady Hale noted at paragraph 94 of her judgement in the case of *First Group plc v Paulley [2017] UKSC 4*:

"Time was when the law did nothing to help. But then along came the Disability Discrimination Act 1995. This not only prohibited direct and indirect discrimination against disabled people; it also imposed duties upon the providers of employment, accommodation, goods and services, in certain circumstances, to make reasonable adjustments to cater for the needs of disabled people. The object, as has been said time and again, is to "level the playing field", to lower the barriers which prevent disabled people having access to employment, accommodation, goods and services on the same terms as non-disabled people. It is to produce equality of results rather than equality of treatment......"

1. As Ms Reynolds told me in emphatic terms, what they wanted was access. Put another way what they required was the provision of information in the sense of understanding what these bands, particularly the support acts, were singing or talking about. It was clear from the evidence of Ms Nelson, who was only able to discern a beat and the vibration of low notes, that those with hearing loss are unlikely to be able to access concerts of this nature in a musical sense or appreciation. This means that lyrics and words take on a much greater significance and importance both in terms of the songs sung and interaction with the crowd.
2. For the avoidance of doubt, I find that this meant and required access to the entire concert. It may well have been the case that in the early stages of correspondence there was reference only to the Little Mix concert. But this was to miss the point. The provision was not the Little Mix set but the service as a whole. In its early stages the service may only have been for Little Mix but it then metamorphosised into a different service when the support acts were named. The tickets purchased by the claimants were not just for Little Mix; they were for the whole event and, therefore, it follows that access was required to the entire event.
3. It is also convenient to deal here with what I mean by “access to the entire event”. The evidence of all three claimants was that when they purchased the tickets they did so in order that they could see Little Mix with their daughters. Ms Reynolds said that, “We knew that there could be support but we paid for Little Mix…….and if it had only been Little Mix that would have been fine”. Ms Cassandro said that when they purchased the tickets they knew that no support had been advertised and that their “priority was Little Mix”.
4. It might be concluded in consequence that the support acts were therefore of little importance to these claimants and that therefore the lack of BSL interpretation was also of little consequence. If so, then in my judgment, that also misses the point and would be wrong. The essence of the reasonable adjustment is to approximate the experience to those without hearing loss. I rather doubt that those people who could hear, save a few, were necessarily that interested in what the support acts were doing or what they said. Support acts are often seen as warm-up acts for the main event and will not necessarily attract a large audience as people mill about and go to the bar, and the like. But it is the fact that these people can hear what is being said or sung and if a word or phrase piques their interest they can refocus their attention. That option is not available to those with hearing loss unless they have an interpretation of what is being sung and/or said.
5. Accordingly, I would accept that none of the claimants necessarily had a particular interest in the support acts, one of which, the Germain Sisters, had never sung in this country before. But, whatever their degree of interest, they were entitled to the best level of access reasonably obtainable.
6. It might therefore be contemplated as to what such access looked like given that all the claimants had existing auxiliary aids in one form or another and each could lipread.
7. The correspondence from Live appeared to hint or suggest that these alone might be sufficient to enable the claimants to participate in and experience the concert. That was not only naïve but appears to have been reached without any understanding of the nature and extent of the disability of each claimant.
8. The evidence from the claimants was whilst their auxiliary aids might assist them in their normal everyday lives to a degree, they were of no use in the circumstances of a concert. And, whilst they were all competent lip readers, nonetheless, this required fairly strict criteria to be met and, even then, a deal of what might be said would still be missed. These criteria, as set out in their evidence, required a person only being about 1-2 m away, not turning their head and speaking clearly. In the context of a concert that would be completely unachievable.
9. Live also offered carer tickets with a view then to each of the claimants effectively bringing their own interpreter. I do not regard that, in the circumstances, to be a satisfactory or reasonable adjustment. As was pointed out, the level of interpretation that was required would have realistically ruled out bringing a friend along for that purpose. Instead, it would effectively mean having to bring along a professional interpreter with the attendant cost that would involve which, in itself, would offend against paragraph 7.40 of the Code because the claimants would have been left paying for the cost of that adjustment.
10. Further, simply upgrading tickets or placing the claimant and their children close to the stage would not have overcome the difficulties which they faced. It can therefore be safely concluded, which I do, that none of these options would have been reasonable for any of the claimants. Of course, at this stage the court needs to consider deaf people in general and the issue would be whether but for the provision of an auxiliary aid, they would be put at a substantial disadvantage in comparison with persons who were not deaf.
11. In light of what I have said above I have no hesitation in finding that deaf people were at a substantial disadvantage without a BSL interpreter for the entirety of this concert. Of course, this was much more than a minor or trivial matter; it went to the very heart of whether they would be able to experience and participate in the event as a whole, over the course of several hours.
12. That being so the burden would then shift to Live to establish on balance as to why the provision of a BSL interpreter would not have been reasonable or, put another way, to justify the discrimination which arose.
13. I accept and acknowledge that, of course, Live have not participated in this trial and I have not therefore had the benefit of any submissions of fact and law on their behalf. However, in the circumstances of this case, as I have already indicated, I do not find that it would have made any, or any material, difference to my conclusions. The fact that Live, albeit at the last moment, provided Ms Raper as an interpreter is tantamount to an admission that a BSL interpreter was a reasonable adjustment because otherwise she would not have been provided. The issue centres upon the fact that Ms Raper was only engaged in respect of Little Mix and not additionally for the support bands.
14. In this regard, and generally, the witness statement evidence from Live has very little to say. The evidence of Mrs Hobbs set out all the steps that they had taken short of providing a BSL interpreter, that the cost of doing so was high and that the support acts would have been difficult to interpret because they were only known about on 18th August 2017 and that information was embargoed until 22nd August 2017.
15. Mr Hobbs described the problems which then arose with accommodating and building the infrastructure from which Ms Raper would perform. Mr Bowers, Financial Director of Live, described the budgeting process, the fact that these costs were not taken into account from the beginning of the planning and that the concert suffered a loss of £42,000.
16. Overall, the thrust of Lives’ position in relation to the support acts was that there was insufficient time to deal with the issues which arose. I reject that contention. Whilst I found it slightly surprising to learn that Live had not previously, until Ms Reynolds wrote in August 2017, been asked to provide a BSL interpreter at a concert, a considerably greater concern was the fact that Live appeared to have given no thought whatsoever to the possibility of deaf people attending one of their concerts and, therefore, to have given any consideration to what reasonable adjustments might need to be made.
17. They had certainly considered that disabled people would attend because, as Mr Hobbs exhibited, the diagrammatic plan for the event incorporated a disabled viewing area at the front of the stage. But I have reservations as to whether there was any real contemplation or thought given in relation to deaf people.
18. The terms of paragraph 7.26 of the Code could not be clearer and, in the context of this case, once Live were aware of the requirements of the claimants it would, in my judgment, have been reasonable for them to engage an interpreter as a reasonable solution. The provision of a sign language interpreter is specifically mentioned at paragraph 7.47 of the Code and the nature of the anticipatory duty ought, in my judgment, to have led them to that conclusion.
19. Whilst it is of course unrealistic for organisations to carry the Code with them at all times, the simple application of common sense in this case should have resulted in an understanding that a BSL interpreter would give additional support or assistance to someone who was deaf. I therefore disagree with Mrs Hobbs’ assertion that Live went over and above what was required of them in what they did.
20. There was clearly suspicion on the part of Mrs Hobbs that Live were being enticed into a commercial arrangement with Ms Pascall and that somehow she was in cahoots with Ms Reynolds to do so. I did not find any evidence of that. However, even absent that suspicion I find that the correspondence discloses that Live’s position was generally reticent and that they viewed Ms Reynolds request more as a nuisance than something which they should have been proactively pursuing. This culminated in the somewhat remarkable statement in the email of 9th August 2017 (see: paragraph 24 above) that no interpreter would be provided at all.
21. This brings me to the anticipatory nature of the duty to make reasonable adjustments. Had Live paid heed to this then, in my view, it is inherently unlikely that there would ever have existed a dispute between the parties at all. But in the event, it was all ‘last-minute’, which is never generally a sound basis for decision.
22. It is evident from Lives’ witness statement that planning for this event, both in budgetary as well as in practical terms, started about six months before the event. It was foreseeable that deaf people were likely to want to attend and that therefore the cost of an interpreter, as well as any additional infrastructure, could be factored into the artists fee or spread in other ways.
23. In passing, the evidence of Ms Raper was that she would have been better off had she been able to undertake her performance from within the disabled area where the claimants were seated rather than on a purpose-built platform next to the stage. This would have brought her closer to her audience and she was of the view that this would make her signing all the more effective. This could no doubt have therefore been accommodated within the original design and construction of the disabled viewing area and the cost of that platform avoided.
24. I have already determined that it was reasonable *per se* to have a BSL interpreter present but I also conclude, having regard to the non-exhaustive factors in paragraph 7.30 of the Code that it was reasonable in all the circumstances to do so. It is clear that a BSL interpreter would have overcome the substantial disadvantage to which deaf people would otherwise be put; it would have been practical (and, in fact, was) for Live to have taken that step; the financial cost of about £2250 (£1750 for the infrastructure and £500 for Ms Raper) was not unreasonable or extortionate; and, the provision of the signer would have caused no disruption.
25. In terms of practicality the evidence of Ms Pascall and Ms Raper, which I accept, was that with about a month’s notice this would be time for an interpreter to prepare for the main act and leave sufficient time to prepare for any support acts albeit with some songs “on the fly”. Given that this was likely to be the best that could be achieved I also accept the claimants evidence, articulated by Ms Reynolds that access was more important in such circumstances than quality.
26. In terms of cost, the fact that this concert might have apparently lost £42,000 is, in my view, neither here nor there. This was not the only concert put on by Live that year and, in my view, its financial position and resources would need to be considered across the Group over the trading period and not confined to this particular concert.
27. Given that according to Mr Bowers (see: paragraph 7 of his witness statement) the cost of this concert amounted to £571,000, the cost of the provision of an interpreter amounted to less than 0.5% of that cost. I would not accept the submission or proposition that those costs could not have been absorbed in some way, if not by creative accounting.
28. For all these reasons, I am satisfied that Live failed to make the reasonable adjustment it should have done and was therefore in breach of its obligations under section 20(5) and section 21 of the Act.
29. Given this failure the next issue is to consider whether this then subjected the claimants, or any of them, to a detriment in breach of section 29(2)(c) of the Act?
30. The complaint from all the claimants - and hence amounting to a detriment - was that, firstly, they were unable to follow or participate in the concert for approximately 2½ hours before Ms Raper appeared to interpret Little Mix at 9 p.m. which they found frustrating; secondly, an inability to participate or share in the event, and; thirdly, importantly in my view, their inability to experience the concert as a whole with their daughters. The threshold is not high and I am satisfied that it has been met.
31. Accordingly, it follows that I find that Live discriminated against all three claimants.
32. Before moving on to the issue of remedy there are five remaining matters upon which I need to comment. These are:
    1. firstly, where concerts of this magnitude and size of being provided for a particular band, with or without support acts, for one night only at a specific geographic location, it seems to me generally speaking that the provision of a BSL interpreter will always be more than likely a reasonable adjustment to make or provide. Obviously, that is contingent upon a BSL interpreter being available (which given the limited supply may not always be the case but if requested in good time may well be) and, if not, then it may be that a live text stream might be an alternative. Where a particular band is touring and playing more than one night at a particular venue it may be that a BSL interpreter can only present for certain dates, advertised in advance. Tickets would then be available on a first-come, first-served basis like everyone else. I specifically make no observations in relation to festivals and the like.
    2. Secondly, Mrs Hobbs was concerned (see: paragraphs 28 to 30 of her witness statement - which might have formed part of her reason for her apparent reluctance to involve a BSL interpreter in this instance) that live music would suffer if a BSL interpreter was required at every event. She asked rhetorically how such an event such as Glastonbury could provide an interpreter for every artiste and how a pub employing a guitarist for £50 would be able to afford such an interpreter? She need not have been concerned. As paragraph 7.29 of the Code makes clear, it is such steps as are reasonable in all the circumstances which have to be taken to make the adjustment(s). In other words, it is case specific.
    3. Thirdly, Mrs Hobbs (see: paragraph 7 of her witness statement) contended that the claimants had no contractual right to enter and attend the concert because they purchased their tickets through a secondary ticket agency, Viagogo. This was, with respect, to misconceive the nature of this action which is not contractual but tortious. The claimants attended the concert, they received the service and were entitled to the protection of the Act.
    4. Fourthly, I derived no assistance from the evidence of Ms Halley at all, not least because she stated at paragraph 5 of her witness statement that she “can now hear music” and had a visual impairment making it more difficult for her to watch a BSL interpreter.
    5. Fifthly, the claimant’s case was also put on the basis that, as an alternative, there had been indirect discrimination. Despite Ms Casserley’s invitation to make a finding in this regard I decline for two reasons. Firstly, having established a failure to make reasonable adjustment there is no need for an alternative finding of liability and, secondly, I have not heard full argument on the point and I consider it would be unwise to venture too far down that path without it. That argument will need to await another opportunity.

**Remedy**

1. This therefore brings me to the issue of remedy. The surviving claims in the Particulars of Claim are for a Declaration and damages.
2. Section 119 of the Act makes clear that I have the power and jurisdiction to do order both of these since the High Court could make such orders.
3. I will exercise my discretion to grant a Declaration. In my judgment this is a remedy which is as equally important, if perhaps not more so, to the remedy of damages because there is then a public recognition of the discrimination which is taken place and a vindication of the claimants’ action. I also note that Live never apologised for their approach to this matter and a Declaration will give Ms Reynolds, Ms Nelson and Ms Cassandro some satisfaction in that regard. I would be grateful therefore if Ms Casserley might prepare a draft of the proposed wording for my consideration.
4. Turning to damages there are two aspects to be considered here, namely, damages to injury to feelings and, secondly, aggravated damages in relation to a specific aspect of case.
5. Damages for injury to feelings are not punitive and are meant to be compensatory in nature and directly linked to the discrimination in issue. The fact therefore, as I apprehended some of the claimant’s evidence, that what happened on this occasion might not be an unusual occurrence although unsatisfactory is, with respect, neither here nor there. This defendant cannot be liable for the acts of those who may have gone before them. It is the effect upon the claimants that needs to be the focus of consideration.
6. Ms Casserley referred me to the principles to be found in *Vento v Chief Constable of West Yorkshire Police [2003] ICR 2008 para 53.* I need not rehearse these here other than to observe that the lower band relevant in this instance, currently £900 - £8,600 is “appropriate for less serious cases, such as where the act of discrimination is an isolated or one of occurrence”.
7. This may well have been a one-off event but it endured for some hours and I find that this had a significant effect upon all the claimants and their respective enjoyment of the concert. That they were obviously impressed by the interpretation of Ms Raper. That it heightened their enjoyment and participation of the Little Mix set only stands in stark contrast to what they missed out upon by the lack of such interpretation for the support acts. I also accept their evidence that they were unable to enjoy, or share, that experience with their daughters as much as they would have that interpretation been available.
8. Ms Reynolds at paragraph 53 of her witness statement said:

“The support acts performed for nearly 2 hours at this concert. It was an immensely frustrating experience not knowing what was being sung, seeing everyone else who could hear enjoying themselves and having to wait for the BSL Interpreter to come on the stage. The experience of repeatedly being turned down by the Defendant and her staff, despite offering Performance Interpreting as a resource to booking a BSL Interpreter, having to go through legal means to make this happen, being treated differently was a deeply unpleasant and demoralising experience. As a result, I feel very hesitant about booking another concert, although my daughter Cate is very keen”.

1. As Ms Nelson noted variously at paragraph 25 of her witness statement:

“We were unable to follow any performances or announcements until around 9pm when the BSL Interpreter came on stage. If the support acts were engaging with the audience, then we had no means of understanding what was said.

We were unable to follow the supporting acts, and we had absolutely no idea what songs they were singing, nor what they said when they spoke to the audience.

We were at the concert from 4:30pm and did not leave until 10pm. We only had a BSL interpreter for an hour. We could not follow anything prior to the BSL Interpreter being on stage. This was frustrating and hugely disappointing considering that we had all paid full price for the tickets, but our experience was less than equal given that the concert was only 1/3rd accessible.

Our children were obviously disappointed that we were unable to participate or enjoy the event fully, and that we only had access for one hour. They witnessed me feeling quite deflated which created a sense of unrest in them. We aimed to be at the event with the children, fully participate in the whole event and for them to completely relax and not be concerned about us”.

1. Ms Cassandro said at paragraph 24, 28 and 30 of her witness statement that:

“24. I felt totally dismayed and Immediately felt very excluded. I was not going to be able to share full access to the supporting acts and to talk about It with my daughter, Megan afterwards.....

28. I felt totally left out and excluded (as did Victoria and Sally) when the two supporting acts Ella Eyre and the Germain Sisters were on. We had to sit there from 6:30pm till around 9pm with absolutely NO access......

30. The girls were enjoying themselves but it just seemed so unfair that we were unable to have equal pleasure and also not to be able to share the experience with our daughters. I felt very upset at this point. I felt like we were being punished. The interpreter was there but we couldn't use her until Little Mix came on. it didn't make sense at all. From a hearing perspective, it is like asking the hearing audience to watch 2 acts with NO sound from 6:30- 9pm”.

1. I also regard it as relevant and important to their injury to feelings the lengths to which they had to go in order to secure an interpreter even for the Little Mix set. The initial request for an interpreter had been made at least a month before the concert. Whether Live had, in fact, given any real thought to the fact that deaf people might wish to attend the concert remains unclear, but what is not is that Live sought to impose what it considered to be solutions in a rather high-handed manner and in a vacuum of ignorance and misunderstanding as to any of the claimant’s disabilities and needs. There was no enquiry from Live at any point as to the extent and nature of their disabilities. The email from Ms Pascall (see: paragraph 30 above) and the letter before action from Ms Reynolds set out what was wrong or inadequate with the ‘solutions’ but I find that there was, for whatever reason, a marked reluctance, even reticence on the part of Live to make the one adjustment which was not only reasonable, but entirely obvious.
2. At one point (see: paragraph 24) Live flatly refused to provide an interpreter at all, even for the Little Mix act and, but for the taking of the injunction proceedings that, in my judgment, would have remained the position. That the claimants should have to spend such an inordinate amount of time and effort was not acceptable and, as I have already noted, had Live paid any heed to the anticipatory duty the difficulties highlighted by this case may never have arisen.
3. Live’s position was essentially encapsulated within Raftermarsh’s letter of 31st August 2017 when they had said, obviously upon instructions:

“.......Simply put the Concert is not designed to deliver such considerations without creating circumstances that would potentially cause extra health and safety considerations nor is it logistically or commercially viable. It is on this basis and on advice that we concluded that the provision of an interpreter at this event would far outweigh the standard of "reasonable adjustments".

1. The award of damages must therefore in my judgment reflect, at least in part, that it is not appropriate for organisations (where, as here, Act had been in force for almost 7 years) to effectively plead ignorance as to their obligations under the Act under the guise of commercial considerations. This is not to penalise but to encourage such organisations to be proactive in giving effect to the Act and the Code.
2. The second aspect which compounds matters is the outright refusal by Live (see: paragraph 36) to apologise. An apology had been sought but the letter from Raftermarsh of 31st August 2017 not only flatly rejected the request but suggested that, in fact, the claimants should instead have been thanking Mrs Hobbs. Given that an apology might have used a form of words which did not accept any liability, a moment’s reflection might have led Mrs Hobbs and her solicitors to a different response, but it did not. Given my findings, and what ought to be obvious, this simply added insult to injury.
3. Having regard to these various aspects the figure at which I arrived in respect of injuries feeling in respect of each of the claimant’s is in the sum of £5000, a figure with which my Assessor agrees.
4. The remaining issue is that of aggravated damages which arises out of the letter from Raftermarsh dated 10th September 2018 (see: paragraph 48) and the demand that in the absence of any evidence of third-party funding this claim then each of the claimants should provide a full breakdown of all of their assets including property, savings and income and that they should collectively pay into an escrow account the sum of £100,000 to abide Lives costs in the event that they lost. They were given 14 days to comply with these requests.
5. Ms Reynolds noted the effect of this at paragraph 58 of her witness statement in these terms:

“This case has taken over my life, caused many sleepless nights and moments of anxiety. £100,000 is a daunting amount of money to be threatened with just for being deaf and asking for a BSL Interpreter. I have struggled with the fact that a simple request 2 years later has ended with continuous malicious threats to discredit my character and monetary threats”.

1. Ms Nelson noted at paragraph 28 of her witness statement that:

“Since 2017, we have faced threatening legal costs of £100,000 and this has caused considerable emotional stress and increased anxiety”.

1. Ms Cassandro noted at paragraph 33 of her witness statement that:

“I have felt Intimidated by LHG's response to this claim. In September 2018, the Defendant's lawyers threatened us with £100,000 legal costs. We were told that the three of us would be liable to pay this if we lose the case. My first reaction was of panic and dismay. This threat was truly a horrible experience and I felt sick to the pit of my stomach. We were just simply asking for access for the FULL show and yet, we were threatened with this”.

1. In Ms Casserley’s submission the basis of an award of aggravated damages can be found in the authority of *Zaiwalla & Co v Walia EAT/451/00* in which it was held that there was no reason at law why aggravated damages should not be awarded by reference to conduct in the defence of proceedings in a discrimination claim.
2. Such damages, which are not common are, nevertheless, awarded to a claimant who suffers increased distress as a result of the manner in which the defendant behaves and they can be a legitimate head of damages in a discrimination claim.
3. The case of Ms Walia concerned her employment as a Trainee Solicitor with the respondent firm in December 1998. By the end of February 1999 had been determined and upon bringing a complaint of sex discrimination and breach of contract Mr Zaiwalla then did everything he could to make her pursuit of those claims as difficult as possible. As was noted by the Tribunal at first instance, set out at paragraph 22 the judgment of Maurice Kay J:

“........When she took tribunal proceedings a monumental amount of effort was put into defending those proceedings. That exercise was of the most inappropriate kind, attacking the applicant in relation to her personal standards of professional conduct and holding a series of threats over her head which would be daunting to any individual, let alone to someone about to embark on a legal career having difficulty obtaining a training contract. The defence of these proceedings was deliberately designed by the respondents to be intimidatory and cause the maximum unease and distress to the applicant. There is no other way of describing it.’

1. Damages were awarded in that case although, as the headnote cautioned, such cases “are likely to be few and far between”. In this instance the matter complained of was the threat to seek security for costs of £100,000. I regard that threat as verging upon the improper (although it might have been thought there were tactical reasons for it) because Live ought to have been aware that given the conditions to be satisfied in CPR 25.13 it was very unlikely indeed that any such application would ever been successful.
2. For that reason similarly the claimants should have been given comfort by their own legal advisers that the threat was empty. What, however, they appear to complain about is not so much the threat but the realisation that if they were to lose the claim the costs which might be awarded against them could be in the region of £100,000.
3. If they lost that was indeed a possibility but, given that all litigation carries risk, that was an outcome arising as a function of the merits of their case to which they were always subject, with or without any threat to seek security. It was perhaps a clumsy way in which to focus the claimant’s attention on their possible costs liability but it cannot be said, in my judgment, that this amounted to misconduct in the way that Live mounted their defence sufficient to trigger an award of aggravated damages and therefore it is not a head of damage which I can award in this case.

**General**

1. I will fix a date for this judgment to be handed down in the near future at which time I will give judgment in the terms indicated above. This will be in the absence of the claimants although I would be grateful to Ms Casserley for a draft of the Declaration which I will grant and the proposed order.
2. Costs will normally follow the event but, as with the damages, because of the status of the defendant company presently it may be a hollow award given its insolvency. It is a matter for the claimants as to whether they wish for an order for costs but I will need a costs schedule in order to summarily assess them.
3. Finally, I would wish to acknowledge the tenacity of the claimants as well as to thank Ms Casserley for both her careful and thorough written and oral submissions which have made my task easier. I would also like to thank Ms Michaela Benbow and Mr Dave Shields on the first day of the trial and Ms Susan Merrick and Mr Richard Law on the second day for their respective assistance to the Court as BSL interpreters in what can be a difficult and demanding task under pressure; I am grateful to them.

**......................................................**

**District Judge Avent**

**3rd September 2021**

1. https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest [↑](#footnote-ref-2)