

From Exclusion to Inclusion

A Report of the Disability Rights Task Force on Civil Rights for Disabled People

Executive Summary

December 1999

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Introduction

1. Disabled people are one of the most disadvantaged groups in society. The Disability Discrimination Act 1995 (DDA) offers significant rights but its gaps and weaknesses leave disabled people without comprehensive and enforceable civil rights. Our report considers the rights disabled people require to participate fully in society, free from unfair discrimination. But we strongly believe that additional rights are not enough. A sustained communication programme is needed to challenge negative attitudes and ignorance towards disabled people and to ensure that all in society understand why these rights are necessary and what they mean.

2. There is a perception that the needs of disabled people and those of business are in conflict - that additional rights for one must be at the expense of the other. Our work, over the past two years, shows that to be a myth. We represented a wide range of interests: disability organisations, business, trade unions, government and the health service, across the UK. We have proposed recommendations that will benefit both disabled employees and employers, disabled customers and service providers, disabled citizens and others in society. Reaching shared solutions to problems faced by disabled people must be the model for the future.

Recommendations

3. We have drawn from our report the key recommendations and themes. A full list of recommendations is in Annex E. Our recommendations fall within five key categories:

- A) Major extensions to the coverage of the DDA
- B) Public sector leadership in promoting equal opportunities
- C) Refinements to the detail of the DDA
- D) Use of non-legislative measures

E) Further work

A) Major Extensions to the Coverage of the Disability Discrimination Act.

4. The gaps in the DDA are well recognised. The exclusion of education from the DDA is unacceptable. The education that disabled people receive will determine their future opportunities in life and is essential to extending equality of opportunity. We have proposed recommendations to achieve civil rights, in a practical and affordable manner, for disabled people in school, further, higher and local education authority (LEA) secured adult education.

Schools

A strengthened right for parents of children with statements of special educational needs to a place at a mainstream school, unless they favour a special school and a mainstream school would not meet the needs of the child or the wishes of either the parent or the child.

A new right for disabled pupils not to be discriminated against unfairly by schools and LEAs and to have reasonable adjustments made to policies, practices and procedures which place them at a substantial disadvantage to others.

A new duty on schools and LEAs to plan strategically and make progress in increasing accessibility for disabled pupils to school premises and the curriculum.

Further, Higher and LEA-Secured Adult Education

A separate section on further, higher and LEA-secured adult education should be included in future civil rights legislation to secure comprehensive and enforceable rights for disabled people; similar rights should apply in relation to the Youth Service.

7. Public sector services have a major impact on all in society, especially the most disadvantaged. It is therefore right that the public sector takes a lead in promoting the equalisation of opportunities for disabled people. Public services need to be modern and meet the needs of our diverse society. They will only be achieved if those determining and delivering those services understand the society they serve. The barriers to the involvement of disabled people in public life should also be removed.

The Public Sector

The public sector should have a duty to promote the equalisation of opportunities for disabled people. There should be further discussion on the details of this duty, recognising the diversity of public sector organisations. The production of action plans should form an element of this duty. The public sector's purchasing power should be used to promote compliance among contractors and suppliers to the public sector.

The access to services provisions of civil rights legislation should extend to all functions of public authorities, with further consideration of the implications of the duty to make reasonable adjustments in respect of such an extension. Local authorities and registered social landlords should introduce performance indicators locally, including waiting times, for the housing adaption service provided to disabled people.

Public Life

We endorse the recommendations of the Home Office Working Party on Electoral Procedures on access to the electoral process for disabled people.

The legislation should have an associated statutory Code of Practice, explaining the new rights.

5. Accessible transport is fundamental to delivering our aim of comprehensive civil rights. If disabled people are to access employment, education, leisure and other activities, it is vital that they can reach them. The partial exclusion of transport from the DDA provides accessible vehicles, but no duty on transport operators to allow disabled people to actually use them.

The exemption for transport operators from the first and October 1999 phases of the DDA access to services duties should be removed in civil rights legislation.

An 'end date' by which all passenger rail vehicles should comply with rail accessibility regulations should be introduced following consultation. Accessibility regulations should be developed to apply to refurbishment of existing rolling stock.

6. The DDA employment provisions need to be improved. The rights of disabled people in employment should not depend on the occupation they have

chosen to follow. We also wanted to achieve greater consistency with the coverage provided by sex and race discrimination legislation.

The employment provisions of civil rights legislation should extend to all employers¹, irrespective of size.

The exclusion or omission of the police, prison and fire services; the armed forces; partnerships; qualifying bodies and barristers and advocates from the DDA employment provisions should be ended, in civil rights legislation.

B) Public Sector Leadership in Promoting Equal Opportunities

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Public Life

¹ Save for private households

We endorse the recommendations of the Home Office Working Party on Electoral Procedures on access to the electoral process for disabled people.

We welcome the initiatives in the *Speaking Up for Justice* report and emphasise the need for appropriate training in disability issues for those involved in the legal process.

We welcome the blind magistrates' pilot and the review of those disabled people requiring third party support to serve on juries. We recommend that, subject to the outcome of the reviews and with appropriate safeguards, these current restrictions should be lifted. The need for a specific statutory reference to physical disability as a reason for discharging a juror should be reviewed.

8. Local Government, health and social services provision are crucial to enable many disabled people to live a full and independent life. We wanted to ensure that these services were delivered without discriminating against disabled people.

As part of 'Best Value', local government should be measured by a specific equality performance indicator in the area of disability.

We endorse the Government's commitment to ensure that access to health and social services is on the basis of need alone, without discrimination on the basis of disability or other factors, such as age, sex or race.

The Department of Health should provide a lead in challenging attitudes towards disabled people in health and social services which lead to discrimination. It should consult with the DRC, disability organisations and the health professions on guidance to ensure decision-making in areas such as access to treatment is consistent, and not influenced by inappropriate judgements on a disabled person's 'quality of life'.

Barriers to joint working in the provision of services and support for disabled people should be tackled. Particular attention should be given to points of transition such as when someone moves from education to employment.

C) Refinements to the Detail of the Disability Discrimination Act

9. The DDA does provide disabled people with significant rights. With employers and service providers beginning to understand their duties under the DDA, it would be counterproductive to recommend no continuity between the Act and future legislation. We considered the DDA's provisions and have proposed their continuation in the areas below. We have also recommended minor changes to legislation and practice that will significantly improve the civil rights of disabled people.

The DDA's general approach to the coverage of employment and trade organisations and the employer's duty to make reasonable adjustments should continue.

Having taken account of their duty to make reasonable adjustments, employers should continue to be able to appoint the best person for the job.

Part III of the DDA has yet to be tested greatly in the courts. Its provisions on access to goods and services should therefore continue in respect of: the categories of less favourable treatment and types of adjustments; service providers' duties to make reasonable adjustments; and the defences for less favourable treatment.

10. Living in suitable housing is as important to disabled people as everyone else in society.

A landlord should not be allowed to withhold consent unreasonably from a disabled person seeking to make changes to the physical features of his or her premises, although the landlord should not have to meet the costs. Further consultation should take place on the correct balance between the rights of the landlord and the disabled person.

11. The DDA gives rights only to those meeting its definition of disability.² We felt that there was a strong case that the current definition should be extended in two limited areas.

The DDA definition of disability should be extended to cover both people with HIV from diagnosis and cancer from when it has significant consequences on people's lives.

² Or people who have had a disability in the past (save in the case of victimisation)

The Government should improve and clarify the statutory guidance on the definition of disability.

12. We felt that improvements could be made to the selection process for jobs.

Disability or disability-related questions before a job is offered should only be permitted in limited circumstances, such as where it is necessary to establish the need for a reasonable adjustment to the interview or selection process or thereafter to do the job and for certain monitoring purposes. Further consideration should be given to other circumstances where such enquiries should be permitted, for instance in the case of the guaranteed interview scheme.

13. The DDA access to goods and services provisions could be made clearer.

The separate justification available to service providers for not making a reasonable adjustment should be removed and the factors to be taken into account in assessing reasonableness be expanded to reflect valid justifications.

D) Use of Non-legislative Measures

14. We believe that many changes in the lives of disabled people can be secured without recourse to legislation.

There are a range of other levels for change that should be considered first, with legislation only where necessary.

Voluntary work should be covered by a Code of Good Practice and a power should be taken to bring volunteers into coverage of civil rights legislation if necessary.

Further progress should be made in ensuring compliance with guidance on access for disabled people to shipping and a new Code of Practice on access for disabled people to air travel should be developed.

The DRC should work with the Department of Trade and Industry, disability organisations and private sector advocates to promote the benefits of 'design for all' products and encourage manufacturers to supply information accompanying their goods in accessible formats. The Government should explore what, in addition to good practice approaches, could be achieved

within the context of the DDA and European legislation to make products more accessible for disabled people, especially as regards the provision of information accompanying manufacture goods in accessible formats.

E) Further Work

15. There are a number of areas in which we had concerns about the provisions in the DDA but felt it was too early to tell whether there would be problems in practice. The DRC and the Equality Commission for Northern Ireland should keep these provisions under review. In other areas, we felt that the provisions could be improved and further work was necessary.

Definitions

The Government should review and consult on aspects of the DDA definition of disability with a view to ensuring an appropriate and comprehensive coverage of mental health conditions.

The Government should consider whether to extend coverage to those with severe conditions which are not longterm, as can sometimes be the case with some heart attacks, strokes or depression. The wider implications of this proposal would need to be explored to avoid covering temporary or readily curable conditions, such as broken legs, where the chances of recurrence were not significantly increased by them having happened once.

The recommendations proposed for improving the DDA definition of disability are not a definitive solution. The DRC and the Equality Commission for Northern Ireland should monitor the definition and review it to see whether further improvements can be made.

Goods and Services

We recognised there was potential concern, under Part III of the DDA, with: the justifications service providers can use for less favourable treatment; the point at which service providers must consider making reasonable adjustments; and whether the DDA provisions need to go further to ensure services are provided in integrated settings. The DRC and the Equality Commission for Northern Ireland should keep these provisions under review. Any future changes should state rights and duties in a clear form.

16. There are a number of areas outside the DDA, which have a major impact on disabled people's rights, where we also felt further work was necessary.

The DRC should work with the Disabled Persons Transport Advisory Committee to consider mechanisms for increasing the availability of accessible private hire vehicles, including the carrying of registered assistance dogs.

Local Transport Plans should be placed on a statutory basis and their effectiveness in meeting disabled people's transport needs and improving the pedestrian environment for disabled people should be reviewed over time.

The Department of the Environment, Transport and the Regions (DETR) should undertake further research into the current effectiveness and enforcement of Part M of the Buildings Regulations and undertake a broader review of Part M, including determining whether it is interpreted consistently and the scope for applying the Part to existing buildings.

DETR should commission the preparation of a good practice guide on planning and access as part of its 2000/02 Planning Research Programme. The proposed document should look at good practice in relation to both the development plan policies and the planning and access aspects of different types of environment.

Further Information

Copies of the full report, versions in Welsh, audiotape, Braille and Easy to Read versions can be obtained free of charge, from:

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Stratford Upon Avon
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[E-mail: ddahelp@stra.sitel.co.uk](mailto:ddahelp@stra.sitel.co.uk)

The Report is also available on the Government's website:
www.disability.gov.uk