Rights and reality

Disabled people's experiences of accessing goods and services

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Leonard Cheshire Disability

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Executive Summary

Introduction

In 1995 the Disability Discrimination Act (DDA) set out important new rights for disabled people across the UK. For the first time this gave disabled people the right to challenge discrimination when trying to access goods and services. But 15 years on disabled people still report problems in accessing shops, services and other facilities.

Enjoying equal access to goods and services must be seen as a basic right – it cannot be acceptable for disabled people to be denied access to services simply because of their impairment. It is the barriers and inaccessibility that people face that disables them – it is what denies people opportunities, it is what leads to inequality, social exclusion and disability poverty. Whilst access to goods and services is only part of this wider issue, it should be considered a critical aspect of any drive to challenge poverty and to reach a fairer, more equitable society.

This report examines:

- why services are still not fully accessible;
- the extent of the problems that disabled people are facing;
- what barriers people face to accessing their rights under the law;
- what might be done to make the situation better.

Key findings

This report is based on two key pieces of research. Firstly it presents the findings of a large-scale quantitative survey, carried out on Leonard Cheshire Disability's behalf by Ipsos MORI. A total of 1,095 disabled people were identified and interviewed face-to-face over four waves of Ipsos MORI's weekly Omnibus service (Capibus).

Secondly it reports on in-depth qualitative interviews with 15 disabled people, conducted by Leonard Cheshire Disability, all of whom had experienced problems accessing goods and services. The in-depth interviews are not used to provide statistical data, but instead are used to explore people's views and experiences in more detail.

The Leonard Cheshire Disability and Ipsos MORI research asked about the extent to which disabled people had experienced discrimination in accessing goods and services:

- **Two in five (40%) disabled people in Britain were able to identify difficulties they had experienced accessing goods and services in the last 12 months**

- **One in four (23%) disabled people in Britain believe that they have experienced discrimination related to their impairment in accessing goods and services in the last 12 months.**

The types of problems experienced include:

- **16% of disabled people have experienced difficulty using public transport;**
- **15% of disabled people have experienced a lack of facilities for disabled people;**
- **13% of disabled people have experienced difficulty entering or getting around premises;**
- **5% of disabled people have experienced service providers talking down to them or using inappropriate language;**
- **2% of disabled people have experienced difficulty in getting information in an accessible format.**

The survey also asked about disabled people's knowledge of the law:

- **one in five (20%) of disabled people in Britain have never heard of the Disability Discrimination Act (DDA);**
- **a further 51% of disabled people stated that they knew little or nothing about it**;

- **In other words: seven in ten (71%) disabled people reported that they had either never heard of the Disability Discrimination Act, or knew little or nothing about it.**

The survey also asked what action disabled people had taken against discrimination from service providers if they had experienced it:

- **More than a quarter (28%) of disabled people who had experienced difficulty in accessing goods and services had taken some sort of action to challenge this. This action included:**
    - **17% mentioned the issue to a member of staff**
    - **12% made a formal complaint to the organisation**
    - **12% made sure they didn't use the shop or service again**
    - **Just 1% took legal action**

- **However, 62% who had experienced difficulties said they did not challenge them**

This tallied with the experiences of the participants in our in-depth interviews – whilst many had challenged service providers, only one had actually taken a case all the way through the court process.

We went on to ask about the outcome of these actions and how service providers had responded. Of those who had taken action:

- **47% stated that there had either been no outcome yet or that the service provider did not do anything at all: 16% said there has not yet been an outcome; 24% said they did not do anything at all; and 7% have been told the organisation will make improvements in its provision of services for disabled people but has yet to do so**
- **39% stated they had received a formal apology**

- **9% stated the organisation had made improvements in its provision of services for disabled people**

Despite the relatively low numbers of people taking action, and the poor experiences of responses from service providers, there was a sense that more effective legislation could have an impact:

- **76% of disabled people agree with the statement ‘shops and providers would make their service more accessible if they felt they might face legal action’.**
- **77% of disabled people also agree that ‘challenging unfair treatment will improve the way services are provided to disabled people’**.

For those disabled people who did not recall experiencing any form of discrimination in the past year, the LCD / Ipsos MORI survey asked what action they would take if they felt as though they had been treated unfairly or differently to non-disabled people:

- **30% stated they would mention the issue to a member of staff**
- **26% stated they would not use the shop or service again**
- **4% stated they would definitely take legal action, although this does contrast with the reality of only 1% of disabled people who have experienced difficulties accessing goods and services taking legal action in response.**

The survey then examined why more people were not taking action:

- **57% of disabled people agreed with the statement ‘I don’t think I would be able to afford the cost of taking legal action if I felt unfairly treated’.**
- **more than a third (36%) of disabled people agreed with the statement ‘I would not know where to go for advice on how to challenge fair treatment’.**
- **only 42% of disabled people feel they know enough about the law to be able to challenge unfair treatment.**

The findings of the survey were reinforced through our in-depth interviews. Participants reported on the costs and the complexity of trying to challenge discrimination and complaints included being "passed from pillar to post", that "you can't win", that "it's too difficult" and even "the DDA doesn't work".

The Leonard Cheshire Disability and Ipsos MORI survey also examined the 'business case' for improving access – looking at the potential benefits for businesses in becoming more accessible, and the potential risks of failing to do so:

- **79% of disabled people agreed with the statement: 'If I felt a shop had discriminated against me because of my disability, impairment or illness I would tell my friends and family about it'.**
- **62% of disabled people agreed with the statement: 'If I felt a shop had discriminated against me because of my disability, impairment or illness I would advise my friends and family not to shop there.'**

A participant in our in-depth interviews summed up the case saying: "If we could get in your shop then we would spend money in there!"

Recommendations

Improving the accessibility of goods and services is a vital step in achieving equality for disabled people. Leonard Cheshire Disability would also argue that it will also help strengthen the UK economy, improving opportunities for disabled people and opening up new markets for shops and services. But the findings of our research show that disabled people still face major barriers to access despite the fact that legislation setting out their rights has been in place for 15 years. In other words, the rights in legislation are simply not translating into reality for many disabled people. This report has found that the major block to change is the complexity and difficulty that disabled people face in actually enforcing their rights and challenging discrimination. Leonard Cheshire Disability would argue that improving this situation is a critical next step in making the UK genuinely accessible for all.

This report sets out a series of key recommendations to help make the law work more effectively. These are explained in more detail in Chapter 4 of the report, and include proposals to:

- Conduct a formal review examining the effectiveness of the law and how disabled people's access to their rights in this area can be improved. This review should inform the development of future guidance and regulations, and examine in detail any areas where future extension or adjustment of the law may be necessary.
- Work must be undertaken to raise awareness among disabled people of their rights under the law.
- The Government should work with the EHRC, the Legal Services Commission and any other bodies as appropriate to identify how to increase the support available to disabled people to be able to take accessibility cases.
- The Questions Procedure for Part 3 of the DDA must be better publicised. Any disabled person who has experienced discrimination whilst accessing goods and services should be able to find the relevant advice and be able to use the procedure to engage with a service provider.
- A new, strengthened Questions Procedure that incorporates arbitration should be considered. If appropriate this system should be tested out in pilot areas so that the impact and any additional costs could be closely monitored.
- Consideration should be given to introducing the capacity for joint or representative actions on accessibility issues.
- Consider the development of 'Equality Tribunals' to take over responsibility for hearing accessibility cases.
- The Government and the EHRC will need to work extensively with service providers in order to raise awareness of their legal obligations around providing equal access.

Chapter 1 – Introduction and background

Background

In 1995 the Disability Discrimination Act (DDA)[1] was introduced to help protect disabled people from discrimination in a variety of key aspects of their lives. The Act introduced new rights in areas such as employment, transport, education, and in accessing goods and services. This report focuses primarily on this last area – exploring the impact and effectiveness of disabled people's rights to equal treatment when accessing goods and services.

The DDA 1995 set out a basic framework of rights to equal treatment in accessing goods and services, but these rights have been introduced gradually, in order to give service providers the time to adapt to the requirements. Many small businesses were not fully covered until the Act was extended in 2004, and public transport vehicles were only covered after the Disability Discrimination Act 2005 further extended the law.

But now, broadly speaking, the duties in the Act apply to any provider that offers goods or services to the public – so for example this would include any shops, hotels, public libraries, public transport and many other services. The rights established in the DDA mean that disabled people in the UK are able to challenge discrimination when accessing shops or services, and that providers of any publicly available service have to make sure that they are not excluding disabled people.

This means that it is unlawful for service providers to refuse to provide a service to a disabled person without justification, to provide a service to a lesser standard or on worse terms without justification, or to fail to make 'reasonable adjustments' to the way services are provided to ensure that they were not discriminating against disabled people.

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[1] For the full text of the Disability Discrimination Act (1995) see here: http://www.opsi.gov.uk/acts/acts1995/ukpga_19950050_en_1

The ‘reasonable adjustment duty’ is one of the most important and widely recognised elements of the DDA and is the principle duty that gives disabled people the right to access services. In broad terms, the duty means that a service provider must do whatever is reasonable in order to ensure that a disabled person can access their services on the same terms as any other customer. In relation to accessing goods and services, the duty says that service providers should anticipate the needs of disabled customers. In other words, it is not enough for a shop or a service provider to say that they will think about making a change after someone has been unable to access their services – they should anticipate what barriers people may face and do whatever they reasonably can to overcome them. They must also continually assess how their policies, practices or provisions might impact on disabled people.

If disabled people feel that they have been discriminated against they can challenge the service provider. If the disabled person is not content with the response, or agreement cannot be reached as to what is required, then the disabled person can take the service provider to court. Whilst there are published ‘codes of practice’ that set out what sort of actions are likely to be considered reasonable, ultimately only a court has the power to decide what is ‘reasonable’ for that service provider.

This report examines whether disabled people still face barriers to accessing goods and services in the UK, and how the rights set out in the law are working in practice for those who do experience discrimination.

Inaccessibility, disability poverty and social exclusion

Leonard Cheshire Disability is campaigning to end disability poverty. Disabled people are twice as likely to live in relative poverty as non-disabled people and our research has found that when the additional costs disabled people face as a result of their impairment are factored in, well over half of disabled people in the UK face living in poverty.[2]

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[2] Disability Poverty in the UK, Parckar, G, Leonard Cheshire Disability, 2008

There are many different dimensions to disability poverty. As well as the key measures of financial poverty it is important to consider wider aspects of social exclusion:

- disabled people are twice as likely as non-disabled people to have no qualifications;
- disabled people are far less likely than non-disabled people to be in employment;
- disabled people are less likely than non-disabled people to have savings;
- disabled people are less likely than non-disabled people to own their own home;
- continuing inaccessibility in society means that disabled people face barriers to accessing goods, services, facilities and opportunities[3].

Lack of access to goods and services is a key contributing factor to disability poverty. In 2003 Leonard Cheshire Disability published 'Mind the Gap', a report examining the links between transport accessibility, poverty and exclusion.[4] It highlighted the detrimental effects of inaccessible transport on disabled people's independence, social participation and employability. It also explored the wider implications of inaccessibility, in terms of limiting access to healthcare, leisure activities and socialising with family and friends.

And 'access' is not only about transport. It encompasses a broad range of areas such as housing, employment and training, the built environment, communication and information technologies, the justice system and leisure services. Leonard Cheshire Disability's 'Disability Review 2009' revealed a series of instances where poor accessibility was having a negative social and material impact on disabled people's quality of life:

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[3] More information on all aspects of disability poverty can be found in the 'Disability poverty in the UK' report. This sets out key policy recommendations to challenge disability poverty, and key indicators to better measure and monitor it. The report can be found here: http://www.lcdisability.org/?lid=6386

[4] 'Mind the Gap', Campion J et al, Leonard Cheshire Disability, 2003

- 28% of respondents had been unable to take up an education or training course because of inaccessible transport
- 18% had been forced to turn down a job and
- 48% had missed a hospital appointment.[5]

Given the qualification gap between disabled and non-disabled people, the substantial discrepancy in employment rates, and the links between disability and health inequalities, it is clear that the role of poor accessibility as a driver of many aspects of disability poverty should not be underestimated. An inaccessible society not only denies disabled people opportunities and contributes towards poverty, it is also in itself a manifestation of social exclusion and disability poverty.

Definitions

The issue of access to goods and services is covered in Part 3 of the DDA. These provisions cover most services provided to the public, including, for example, services provided by local councils, doctors' surgeries, shops, hotels, banks, pubs, post offices, theatres, places of worship, courts and voluntary groups. Non-educational services provided by schools are also included.

There are a few areas where slightly different rules can apply, such as private member clubs which have a meaningful selection process for members, and education.[6] Similarly, the DDA gives disabled people rights in access to certain types of transport - including aspects connected to transport such as stations, airports and booking facilities, whilst transport vehicles themselves are generally only covered by certain aspects of Part 3. The technical requirements for the design of public transport are dealt with elsewhere in the DDA, in Part 5, although it is of note that recent regulations will require all buses to meet accessibility standards by 2017 and all trains by 2020.

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[5] Disability Review 2009, Greenhalgh, C and Gore, E, Leonard Cheshire Disability, 2009

[6] For a detailed explanation of coverage, see the Equality and Human Rights Commission website http://www.equalityhumanrights.com/your-rights/disability/access-to-services/

The law does not stipulate a single definition of what is ‘reasonable’, allowing for different adjustments to be applied in different contexts. Some of the factors that may be taken into account include the size of, and resources available to, a service provider, how practicable it is to take steps and whether they would overcome the difficulty faced in accessing a service.

The DDA outlines four main types of discrimination: direct discrimination; disability-related discrimination; victimisation; failure to make reasonable adjustments. Discrimination in access to goods and services most commonly falls within ‘failure to make reasonable adjustments’. Disabled people who have been discriminated against unlawfully can bring a complaint in their local County Court, or, in Scotland, in the Sheriff’s Court. Ultimately it is down to a court to decide what is ‘reasonable’.

The current system

Although the reasonable adjustment duty has been incredibly important in helping to change attitudes and move towards a fairer and more accessible society, it has also proven extremely difficult for disabled people to actually enforce their rights under the law. Challenging a service provider who refuses to make a reasonable adjustment essentially requires an individual disabled person to take a court case. Yet despite continuing evidence of discrimination from inaccessible services, there have been remarkably few cases actually brought under these provisions of the Act.

In 2002, research commissioned by the DWP found that between December 1996 and September 2000, there were around 9, 000 tribunal cases issued and/or decided in the UK under Part 2 of the DDA. In contrast, only 53 cases were decided under Part 3 of the Act during an even longer survey period, from December 1996 to February 2001[7]. The report identified a number of possible reasons for the relative paucity of cases under Part 3, including:

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[7] ‘Monitoring the Disability Discrimination Act 1995 (Phase 2)’, Leverton, DWP 2002

- the costs of taking a case and the heavy reliance on voluntary and *pro bono* advice;
- a lack of awareness among some advisers / representatives of the processes for lodging cases, and of wider disability issues;
- the perceived complexity of the court system and its procedures.

Attempts to evaluate the effectiveness of the law have been further complicated by an absence of reliable national information sources detailing Part 3 claims.[8] In any case, simply tracking the number of cases brought under Part 3 would not in itself provide an adequate yardstick for measuring progress in this area. As noted above, evidence suggests that there are a number of barriers within the current system that are preventing disabled people from challenging discrimination in the first instance. Thus, low numbers of DDA cases appearing in court and an absence of case law should not be considered to indicate low incidences of discrimination. Indeed, the research conducted for this report, and previous Leonard Cheshire Disability studies[9] have identified that goods and services remain far from universally accessible.

Detailed information that captures the accessibility of goods and services in the UK would clearly be instructive here, but there are very few nationally recognised statistics on the number of accessible businesses or services, or the reasonable adjustments service providers have made to ensure equal access for disabled people. This is in part due to the broad terms in which the reasonable adjustment duty is framed, which, whilst giving service providers flexibility in meeting disabled people's varied requirements, does also mean that there can be a lack of clarity for both providers and disabled people as to exactly what is and isn't required under the law. This in turn means that it is difficult to collect authoritative statistics on the level of accessibility in the UK.

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[8] Ibid.

[9] The 'Disability Review' series of reports have consistently found disabled people reporting that they have faced discrimination in accessing goods and services, in spite of their legal rights under the DDA.

Against this background, there has been some recognition from policy-makers that problems in this area are far from resolved. In 2008, the Government published the Independent Living Strategy[10], which recognised the critical importance of tackling inequality in access to promoting disabled people's independence. Of its two key stated aims, the Strategy promised that by 2013:

"Disabled people will have greater access to housing, transport, health, employment, education and leisure opportunities and to participation in family and community life."

The Equality Act

A key factor for the timing of this report is the development of the Equality Act. Announced in April 2009 and passed into law in April 2010, the Act brings together all the UK's key pieces of anti-discrimination legislation, including the DDA, into a single Act. It is intended to consolidate, simplify and strengthen the law, helping individuals to better understand their rights and helping businesses to comply with legislation. The Act is due to come into force in stages, with the majority of measures coming into force in October 2010. In time this would mean that disabled people's rights to equal access in goods and services will not be enforced through the Disability Discrimination Act 1995, but instead through the Equality Act 2010.

In the area of access to goods and services for disabled people, for the most part the Equality Act simply replicates the provisions in the Disability Discrimination Act. As such the strengths and benefits of the legislation will broadly be maintained – but so will the flaws and weaknesses. The development of the Equality Act, and the rules and regulations that will accompany it, represents an important opportunity to look to tackle some of the problems in the current system.

In particular, whilst the legislation itself will set out the primary rights and responsibilities in the area of goods and services, much of the

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[10] 'Independent Living: A cross-government strategy about independent living for disabled people', Office for Disability Issues, 2008

detailed implementation of those rights is steered through guidance and ‘codes of practice’ for which the Equality and Human Rights Commission will take responsibility. In other words, whilst the legislation itself will largely maintain the status quo with regard to the principles behind disabled people’s rights to access to goods and services, there is now a rare opportunity now to shape the way in which those rights will be implemented.

The need to improve access to the law was acknowledged as one of the key drivers behind the development of the Equality Act:

“Our discrimination laws have helped us make progress on equality, but…they have become complex and difficult for people to understand and navigate.”[11]

However, other than the simplification achieved by bringing several pieces of legislation into one place, there seems to be little in the Equality Act that will specifically make it easier for disabled people to access their rights. The mechanisms used to actually enforce the law remain largely the same.

Leonard Cheshire Disability is broadly supportive of the aims of the legislation; in particular it will help to close a number of significant legal loopholes. From the time that the Act was first proposed we have been engaged in lobbying to ensure that disabled people’s rights are enhanced, and not reduced. But going forward it will be just as important to ensure that disabled people can practically and effectively access and use their rights, as it has been to first ensure that the principles enshrined in law are correct.

We hope that this report will help to inform the development of an implementation process for the Equality Act that makes disabled people’s rights under the law fully accessible, usable and enforceable.

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[11] ‘A Fairer Future: The Equality Bill and other action to make equality a reality’, Government Equalities Office, 2009

Chapter 2 – Findings of our research

About the study

The principal aim of this research was to explore disabled people's experiences of accessing goods and services, and their experiences of challenging discrimination if they did experience it. More specifically, we have sought:

- to examine disabled people's awareness and understanding of their rights under Part 3 of the DDA;
- to explore the experiences of disabled people in accessing goods and services, particularly in relation to the legal protections contained within the DDA;
- to understand any barriers or difficulties disabled people face to challenging unfair treatment and discrimination;
- to establish and analyse possible alternatives to the current system, formulating recommendations for policy makers on how to enhance the effectiveness of the law.

The report presents the findings of research carried out by Leonard Cheshire Disability between November 2009 and January 2010, which comprised two distinct stages. The first stage was a large-scale quantitative survey, carried out on Leonard Cheshire Disability's behalf by Ipsos MORI[12]. A total of 1,095 disabled people were identified and interviewed over four waves of Ipsos MORI's weekly Omnibus service (Capibus). Capibus interviews a nationally

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[12] Interviews were conducted face-to-face between 13 November and 10 December 2009. Those identified as eligible for this survey retained the weights allocated to them as part of the overall Capibus weighting scheme, in which the data for all 7,680 respondents was weighted to reflect the known profile of the adult population in GB for age, social grade, region and work status - within gender, plus tenure and ethnicity. The technical report (inc. the questionnaire and full data tables) will be made available for download from the Leonard Cheshire Disability and Ipsos MORI websites.

representative quota sample of adults throughout Great Britain aged 15+. Two screener questions were used to establish disability status (based on the Disability Discrimination Act definition) and hence eligibility for the rest of the questions, from a total sample of 7,680 Capibus respondents.

The second stage consisted of in-depth qualitative interviews with 15 disabled people, all of whom had experienced problems accessing goods and services. Participants were recruited through Leonard Cheshire Disability's Campaigns Network and were selected to reflect a range of impairments. A significant number of participants had physical impairments that required them to use a wheelchair or walking aid. Other impairment types included sensory-related impairments, learning difficulties and disabilities and mental health conditions. The sample group also covered a range of socio-demographic characteristics, including sex, age, ethnicity and geographic location.

The in-depth interviews are not used to provide statistical data, but instead are used to explore people's views and experiences in more detail. This allows us to go beyond the wider statistical data and examine not just what happened to people, but also why they felt it happened, how it impacted upon them and what might have improved the situation for them. As such, we have included verbatim comments from interview participants, with a view to highlighting the precise views and opinions articulated. This evidence is situated alongside the findings from our quantitative survey work.

Experience of discrimination

The Leonard Cheshire Disability / Ipsos MORI survey began by asking about disabled people's experiences of discrimination related to their impairment.

- **It found that nearly one in four (23%) disabled people in Britain believe they have experienced discrimination related to their impairment in accessing goods and services in the last 12 months**.

- **40% of disabled people could identify a difficult experience whilst accessing goods and services in the past 12 months.**

It is clearly a matter of significant concern that experiences of discrimination remain so high 15 years after the introduction of the Disability Discrimination Act and more than 5 years after the Act was extended to cover almost all service providers. These comparatively high figures also stand in stark contrast to the remarkably low number of cases that ever reach a court. It is clear that disabled people continue to experience treatment that they consider unacceptable when trying to access goods and services, but few seem to make the leap from this experience to tackling the issue through legal action.

Analysing the extent to which this means that service providers are breaking the law is, however, extremely difficult. Because only a court can conclusively decide what is and is not a reasonable adjustment, it is very difficult to say definitively what constitutes a breach of the DDA. The guidance and codes of practice produced by the Disability Rights Commission (DRC) on this area do however give a clear indication of what is likely to be unlawful. Certainly many of the experiences reported in more detail through our in-depth interviews would, by the terms set out in the codes of practice, clearly represent breaches of the law – although of course few of these actually reached a court.

Types of problems experienced in the last 12 months

Survey participants were asked to identify any particular problems they had experienced when trying to access goods and services over the past 12 months:

- 16% of disabled people have experienced difficulty using public transport;
- 15% of disabled people have experienced a lack of facilities for disabled people;
- 13% of disabled people have experienced difficulty entering or getting around premises;

- 5% of disabled people have experienced service providers talking down to them or using inappropriate language;
- 2% of disabled people have experienced difficulty in getting information in an accessible format.

These findings demonstrate the range of problems that disabled people continue to face when accessing goods and services. They also help to highlight the variety of different issues that can render a service inaccessible – for some people physical inaccessibility will be the main barrier, for others inaccessible information can stop them from making use of a service. In this area the broad nature of the reasonable adjustment duty is helpful in terms of ensuring that service providers need to consider all aspects of accessibility, but the variety of different problems experienced suggests that many are still failing to do so.

It is unclear from this study as to whether service providers are actually unwilling to make reasonable adjustments or whether they are simply not aware of the problems. In either case a more effective enforcement mechanism would be beneficial as it would mean that more disabled people would feel empowered to raise issues that they have faced, and service providers themselves would get a much clearer steer as to what they need to do to make their services accessible. Evidence suggests that there is also a strong business case around reaching more customers by enhancing accessibility. Better approaches for sharing information and ‘best practice’ have the potential both to improve accessibility for disabled people, and to open up new markets for businesses. The ‘business case’ for accessibility is addressed in more detail later in this report.

It is also important to note that in many instances disabled people will have already identified shops and services that they feel are accessible and will tailor their routine accordingly – people will naturally try not return to shops or services where they have had bad experiences, and this in turn could mean that recorded levels of discrimination will not necessarily reflect the number of services that are actually inaccessible.

Public transport

Inaccessibility is of course not just related to shops – problems with housing or pavements, for example, can reduce people's mobility, and problems with particular transport routes can make it impossible for some people to reach other services. The survey results suggest that access to public transport continues to be a significant issue for many disabled people, with 16% of disabled people stating that they had experienced problems trying to use public transport in the past year. These findings in the Leonard Cheshire Disability / Ipsos MORI survey were strongly supported by our qualitative research. For many participants, a key area of difficulty was using public transport, such as taxis, trains, buses and coaches:

> "I often use the coach service. They require 48 hours advance notice for wheelchair users, which is arranged through assisted travel. Despite arranging this I have been turned down by drivers on the day, without explanation."

Other participants described the barriers faced when trying to access local bus services:

> "Basically I can't get on a bus because they are not accessible. There is one bus which has low floor access, but you never know when it's going to turn up, if at all."

This demonstrates not only the impact of inaccessible public transport vehicles themselves, but also of a lack of information about accessible services. An accessible vehicle is rendered inaccessible when disabled people have no information about when and where it is due to be in service.

For many people the absence of accessible local bus services can mean a reliance on taxis, although regular taxi travel can be prohibitively expensive, and can also be subject to further accessibility issues:

> “I can’t use any of the local buses because they aren’t accessible. Only one of the local taxis is accessible.”

One respondent also reported on the accessibility of their local rail services:

> “At my local train station one side is ramped, but to get to the other side you have to climb a bridge. I can only travel in one direction!”

All of these examples show the importance of accessible public transport – a whole range of goods and services can be made inaccessible to disabled people if public transport services do not allow them to get there. Leonard Cheshire Disability’s ‘Mind the gap’[13] report in 2003 examined the impact of inaccessible public transport on disabled people. That report found that:

- 23% of those respondents that were actively seeking employment have had to turn down a job offer and a further 23%, a job interview, because of inaccessible transport. Almost half (48%) said that inaccessible transport had restricted their choice of jobs, rising to 62% of wheelchair users and 86% of those with a visual impairment.
- 20% of respondents found it difficult or impossible to get the healthcare they needed as a result of inaccessible transport.
- 50% of those respondents that did not see their family and friends as often as they would like stated that that it was as a consequence of inaccessible transport, rising to 67% of those respondents without access to a car.
- 27% of respondents said that inaccessible transport restricted their leisure pursuits, rising to 43% of those without a car. 20% said that inaccessible transport had prevented them from going on holiday, increasing to 27% of those without a car.

Most transport services are covered by Part 3 of the DDA, and some services are also covered by Part 5 (which sets out design regulations for transport vehicles). Some modes of transport are also

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[13] ‘Mind the Gap’, Campion et al, Leonard Cheshire Disability, 2003

covered by European regulations and additional best practice design guidance. But despite the weight of legislative support in this area the findings of our survey suggest that there is still a long way to go before the UK enjoys a genuinely accessible public transport system. Leonard Cheshire Disability has welcomed recent legislation imposing deadlines by which time all trains and buses must meet accessibility guidelines (2017 for buses and 2020 for trains). However, these changes are still a long way from completion and even then are only likely to solve some of the issues highlighted by our interview participants. Furthermore, the DDA does not currently apply to aeroplanes and ferries, meaning that disabled people's rights are not fully protected across transport types. A key mechanism in driving accessibility forward would be an effective and enforceable route for disabled people to highlight and press for change to inaccessibility when they encounter it.

Shops and services

The LCD / Ipsos MORI survey found that 13% of disabled people had experienced difficulty entering or getting around premises in the last year. This was supported by the findings of our 'in depth interviews', where many participants recounted problems with the physical accessibility of shops and services. These included problems with services ranging from high street shops, banks, hairdressers, restaurants and theatres to healthcare centres, solicitors and sports centres. Whilst some service providers had removed the most obvious of barriers (for example, a step to the door of a shop) some participants reported that further actions to make the whole service accessible seemed not to have been considered:

> "All types of shops are inaccessible. For example my local department store – they have an automatic door but the aisles are too narrow for crutches."

Many of the participants emphasised that the specific incidents they had described were not isolated episodes, commenting on the widespread nature of poor accessibility:

“It is an environmental issue from the minute you leave the house.”

“Have I ever experienced problems? Where do you start?!”

The impact of inaccessible goods and services is not simply about the immediate inconvenience of a missed bus or aborted shopping trip. There is a much wider set of consequences arising from poor access which can have a profound impact on disabled people’s life chances. The knock-on effects of inaccessibility were highlighted by a number of participants in our interviews:

“It’s the frustration of wanting to go out and being constantly limited in your choices.”

“It really limits your experiences. This is about inclusion – or rather lack of it.”

The constraints unequal access place on disabled people’s independence and ability to participate fully in society was also raised by participants:

“I feel like I’m not accepted in society. All I’m trying to do is live my life independently.”

“You feel like a second class citizen.”

It is clear that the impact of an inaccessible environment can be acute. Improving access to goods and services is not simply about preventing inconvenience – it is about working towards genuine equality of opportunity. A service that is inaccessible to visit is also likely to be inaccessible for those who might want to work or study there. Inaccessibility – in terms of attitudinal barriers, inflexible policies or practices, poor quality information and physical barriers – represents a major block to equality for disabled people, and a key contributing factor to disability poverty. Inaccessibility can cause personal distress and difficulties, but it can also exclude disabled people from the labour market, or from being able to boost the economy by making use of shops – it is a material factor in the economic health of the nation.

The UK has had legislation in place to challenge the inaccessibility of society for 15 years, and for around 5 years this has applied almost universally across any service that is provided to the public. Yet the results of the Leonard Cheshire Disability / Ipsos MORI survey are clear that inaccessibility is a continuing barrier to equality for many disabled people in the UK. The survey also revealed that:

- **three-quarters of disabled people (76%) felt that 'shops and providers would make their service more accessible if they felt they might face legal action'.**

It is clear that challenging the inaccessibility of our society is critically important to improving disabled people's life chances, and through this enhancing the British economy. It is also clear that effective, enforceable rights for disabled people will be a critical factor in achieving this change.

Challenging unfair treatment

A striking finding from the Leonard Cheshire Disability / Ipsos MORI survey was the discrepancy between the number of people who felt that they had experienced **discrimination** (23%) and the number who said that they had experienced **difficulty** in accessing goods and services (40%).

Low levels of awareness of the DDA may offer a partial explanation for this discrepancy between perceptions of discrimination and numbers of people encountering problems; the LCD / Ipsos MORI survey found that:

- **one in five (20%) of disabled people in Britain have never heard of the DDA;**
- **a further 51% of disabled people stated that they either knew little or nothing about it**;

- **In other words: well over two thirds (71%) of disabled people reported that they had either never heard of the DDA, or knew little or nothing about it.**

A lack of understanding about what constitutes discrimination, and subsequently of how to actually challenge that discrimination, is the first barrier towards an effective system. One of the participants in our interviews summed up their uncertainty over how the law works and how to challenge unfair treatment:

> “I know enough to know something is wrong, but not enough to know what could be done about it.”

Without knowledge of the specific protections afforded by existing anti-discrimination law, the extent to which disabled people are fully able to make use of their rights is clearly questionable.

This lack of awareness of the law itself is reflected in the fact that the survey also revealed that a relatively low proportion of disabled people had taken action to challenge difficulties in accessing goods and services.

- **more than a quarter (28%) of disabled people who had experienced difficulty in accessing goods and services had taken some sort of action to challenge this;**
- **this leaves 62% who had experienced difficulties but did not challenge them.**

From those who had experienced difficulties in accessing services the actions taken included:

- **17% mentioned the issue to a member of staff**
- **12% made a formal complaint to the organisation**
- **12% made sure they didn’t use the shop or service again**
- **1% took legal action**

We also went on to ask about the outcome of these actions:

- **47% stated that there had either been no outcome yet or that they did not do anything at all: 16% said there has not yet been an outcome; 24% said they did not do anything at all; and 7% have been told the organisation will make improvements in its provision of services for disabled people but has yet to do so**
- **39% stated they had received a formal apology**
- **9% stated the organisation had made improvements in its provision of services for disabled people**

It is clearly of concern that only 9% of disabled people who took action as a result of a difficulty in accessing goods or services reported that the organisation had made improvements in its provision of services for disabled people as a response to their action. Equally worrying is that among those who took action 40% reported that there had been no outcome or that the organisation had done nothing at all. This would suggest that either service providers feel that they simply cannot improve accessibility, or that they do not feel that they need to respond to requests to do so. The fact that so many disabled people have a poor experience of service providers responses to complaints is of course also likely to inform their future actions – people may well be put off from raising an issue if they feel that services will simply ignore it. Given the low numbers of disabled people making a legal challenge, this is perhaps not altogether surprising. It does however call into question both the effectiveness of the existing system for enforcing the DDA and the extent to which providers and business are prepared to engage meaningfully with their obligations under the law.

The reluctance of service providers to make changes to the way their services are provided to disabled people was also raised as an issue by several of our interview participants. One interviewee described a series of problems they had encountered after being refused the same discounted online rates for accessible hotel rooms as offered on non-accessible rooms:

> “I phoned them again and again, wrote letters. I even quoted the DDA. But they just won’t listen.”

This was also echoed elsewhere:

> “I’ve tried to appeal to the service provider – I’ve sent letters and threatened to take it further, but they just say they can’t afford to make the changes.”

This highlights the difficulty many disabled people face in actually enforcing their rights under the DDA. Existing enforcement mechanisms mean that ultimately the only way to compel a service to make a reasonable adjustment is by taking legal action. But with only 1% of disabled people who have encountered potential discrimination pursuing this route, those service providers who are failing to fulfil their obligations under the DDA seem to feel that there is little chance of legal action, and therefore little pressure on them to act.

Again, one possible explanation for the very limited numbers of disabled people taking legal action might be found in the low levels of awareness of the DDA. Whilst awareness of the DDA was low, there was a clear sense from our LCD / Ipsos MORI survey that effective enforcement of the law had the potential to improve accessibility:

- **76% of disabled people agree with the statement ‘shops and providers would make their service more accessible if they felt they might face legal action’.**
- **77% of disabled people also agree that ‘challenging unfair treatment will improve the way services are provided to disabled people’**.

This suggests that disabled people do feel that challenging discrimination is important – clearly, therefore, there must be additional factors preventing disabled people from actually taking legal action.

For those disabled people who did not recall experiencing any form of discrimination in the past year, the LCD / Ipsos MORI survey asked what action they would take if they felt as though they had been treated unfairly or differently to non-disabled people. From this:

- **30% of disabled people stated they would mention the issue to a member of staff**
- **26% stated they would not use the shop or service again**
- **4% stated they would definitely take legal action**

It is clear that taking legal action is simply not an option that many disabled people consider viable. It is also notable that the percentage of people who had not experienced discrimination but would consider legal action (4%) was higher than the percentage of those who had experienced discrimination and actually had taken legal action (1%). In other words, when discrimination actually occurs, and the practicalities of taking legal action become evident, even more disabled people back away from using the law to enforce their rights.

The LCD / Ipsos MORI survey also asked disabled people about their personal reaction to difficulties in accessing services. One notable finding here was that nearly half (45%) of disabled people agree with the statement **'When I face too many difficulties accessing a service I eventually give up'.**

It is clear that many disabled people face barriers in accessing services, but in the current system using the law to enforce their rights seems to be an option that almost none would be prepared to pursue.

Barriers to taking cases

Our research went on to explore disabled people's experiences of challenging discrimination, with particular reference to taking legal action. The cost implications of taking a case to court, the time, effort and stress involved, and the difficulty of finding representation and advice were all mentioned as key barriers to taking legal action by participants in our qualitative research. Perceptions of the potential financial burden of taking a case were reflected in the results of our LCD / Ipsos MORI survey:

- **57% of disabled people agreed with the statement ‘I don’t think I would be able to afford the cost of taking legal action if I felt unfairly treated’.**

Interview participants also highlighted the wider cost issues that serve as a disincentive to taking a case, such as solicitor fees, time off work and even the expense of making the necessary phone calls. Some of these issues are not necessarily disability-specific, but disabled people’s much higher levels of poverty, combined with the fact that legal aid is typically unavailable in these cases, is likely to exacerbate barriers to taking legal action to challenge discrimination.

Some of the barriers identified by our interview participants were however specifically impairment-related. One participant with a visual impairment noted:

“It is so difficult to challenge service providers through formal mechanisms as I can’t write letters. You just get passed from pillar to post.”

Another participant with a communication impairment also stated:

“Sometime I find it difficult to find words – I wouldn’t want to make a fool of myself.”

It is paramount that the processes and procedures used to challenge discrimination are accessible to disabled people. Another related issue here is around the availability and adequacy of support; alongside the financial implications of taking a case, problems in finding legal advice and a lack of support for individuals seeking to pursue cases, came out strongly in our research. Our LCD / Ipsos MORI survey found that:

- **more than a third (36%) of disabled people agreed with the statement ‘I would not know where to go for advice on how to challenge fair treatment’.**

This difficulty in finding advice and support emerged as a key barrier to challenging unfair treatment in our qualitative interviews:

> “I’ve taken advice from the EHRC [Equality and Human Rights Commission] but they are only after the big cases.”

> “There are a lot of barriers. For example, you don’t qualify for legal aid so you can’t afford to take a case. With the DDA you can’t take group actions either so the responsibility is all on you. If it wasn’t for this I’d fight it all the way.”

> “It’s very difficult because you have to do it all on your own. There needs to be easier access to support.”

These barriers may connect and intertwine, underpinned by the disadvantage disabled people face elsewhere, in areas such as finance and income:

> “There is always such a long queue on the phone [to get advice] and then there’s the cost involved. I don’t feel like there is much in the way of support available”

As would be expected those participants to our interviews who had pursued, or had considered pursuing, a discrimination case, had a strong understanding of their rights under the DDA. In fact, knowledge of the DDA and the attitudes of service providers came out as key motivating factors for those disabled people who had pursued a case. This suggests that when people are aware of what their rights are they are more likely to consider certain behaviours or barriers to be unacceptable. Yet interestingly only one of the disabled people we spoke to had actually settled their case in court. Clearly this is only indicative evidence, but it does reflect a wider trend whereby accessibility cases, when they are pursued, tend to be resolved or dropped before reaching court, in turn limiting the amount of case law and legal expertise in this area. It also means that there is a small available evidence-base as to the kind of reasonable adjustments services providers have made.

The complexity of the legal system and the enforcement mechanisms were also identified by participants as significant barriers to taking legal action:

> "The disabled person has to be the solicitor. It's very daunting."

> "I used to work for the Local Authority, so I understand all the complex processes you have to go through to make a complaint. If you didn't have that knowledge it would be very difficult."

Again these views are backed up by the findings of our LCD / Ipsos MORI survey, which found that:

- **only 42% of disabled people feel they know enough about the law to be able to challenge unfair treatment.**

For those people who had taken legal action, the stress of doing so also served as an active disincentive to pursuing a case:

> "It's very emotional – the physical effort involved really takes its toll."

A number of participants also stated that the process of taking legal action had in itself put them off challenging unfair treatment again. This was attributed to the costs, the perceived ineffectiveness of doing so and the stress involved:

> "Some disabled people don't feel empowered to challenge discrimination because they feel the law is so ineffective."

> "Disabled people have the will kicked out of them. You can't win anything so the stress isn't worth it."

> "After that I said 'never again'. The DDA just doesn't work."

Once again it is important to note that the results of our LCD / Ipsos MORI survey suggest that these issues go beyond a basic lack of understanding of the law and the protections it is intended to provide. For example, 57% of disabled people feel they would not be able to afford the cost of taking legal action, and 46% believe that taking legal action as a result of unfair treatment is not worth the hassle. Indeed, a number of participants in our interviews described their frustration with the lack of progress they felt had been made, despite changes to legislation. There was a feeling that current enforcement mechanisms are simply not stringent enough to effect substantive change:

> “Time for the stick is long overdue. Legislative action has proved quite useless.”

> “A stick and carrot approach is needed. There needs to be some kind of body to enforce the law. At the moment the law is toothless.”

These comments are broadly representative of the responses from our in-depth interviews. Disabled people who had experienced the system reported that it was far too difficult to achieve change – if a service provider did not want to make an adjustment, even when such an adjustment was entirely reasonable, it required a huge amount of time, effort, determination and even financial risk to try to force any improvement in accessibility. Understandably the vast majority of people did not have the time or the resources to take matters this far, meaning that those service providers who were resistant to any change had little or no incentive to make adjustments.

Those who had pursued matters further reported a hugely stressful and difficult process – some reported that trying to pursue a claim was simply “not worth it”, and some would actively advise others in a similar position not to even attempt to take legal action. Clearly, whilst a flood of litigation is not a desirable outcome for disabled people or service providers, a law that is almost impossible to enforce is not a law that is functioning as effectively as it should be. The general view from the disabled people to whom Leonard Cheshire Disability spoke was that whilst the rights that the law conferred were extremely important, the practical difficulties of actually enforcing the law meant that it was rendered largely ineffective.

The general view from the participants in our qualitative study was that the system needed to have the legal power to compel service providers to take action where necessary, but should not require an individual disabled person to go through the complex and arduous process of trying to take a court case.

Using the law – case study

“In 2004 they built a brand new complex in the centre of my town – shops, car parks and a bowling alley. The bowling alley was at the top level of the car park – it had 8 steps to into it so wasn’t accessible by wheelchair. They provided a lift to this but that didn’t work for 12 months.

“There is a special school about half a mile away from the alley. It was someone at the school’s 18th birthday and they wanted to have it at the bowling alley. As usual the lift was out of service and nobody was doing anything about it.

“In the first instance I spoke to the council, and then I spoke to the owner. He said provisions were adequate even though the lift had never worked.

“I decided to take a case against the bowling alley and received help from the Disability Rights Commission. The case went to court four times, but the judge said there was no case law.

“Ultimately it went to conciliation. I said I don’t want your money – this isn’t about compensation. The bowling alley owner asked what we wanted and agreed that as long we didn’t want any money he would put in a platform lift within 6 months. In actual fact it took 4 years. So I took them back to court for breach of contract.

“It was immensely stressful – the legal fees could have cost me my bungalow. But the indignity of being carried up these steps just made me so angry.”

Improving access – a business case

It is clear that there is a ‘social justice case’ for increased accessibility – it cannot be fair that people are denied goods and services that are available to anyone else, simply because they have an impairment. But there is also a strong case to say that making services more accessible will actually bring long-term business benefits.

- Ultimately a more accessible society will help bridge the current ‘employment gap’ between disabled and non-disabled people, and will in turn mean that disabled people will have more disposable income to spend in services.
- Disabled people already have an estimated spending power of £80 billion per year[14] – services that are accessible for all will have greater access to this valuable market;
- Services that are properly accessible for disabled people also tend to be more accessible for other groups, for example parents with young children;
- Making a service more accessible can produce benefits in terms of the public perception of a service provider, increasing the attractiveness of a brand;
- Disabled people will consistently return to shops where access and service is good, and actively avoid those where it is bad.

We investigated the business case for accessibility through both the Leonard Cheshire Disability / Ipsos MORI survey, and through our in-depth interviews with disabled people. There was a consistent view throughout that disabled people would not only personally avoid any services that they felt were inaccessible, but also that they would tell others to avoid them as well.

> ‘Rather than going to court and all the hassle that involves, I just tend to tell people not to go there.’

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[14] See the DWP media release ‘Spending Power of disabled shoppers can benefit businesses’, DWP, December 2004, as reported here: http://news.bbc.co.uk/1/hi/business/4105385.stm

Our LCD / Ipsos MORI survey also asked people about their views in this area.

- **79% of disabled people agreed with the statement: 'If I felt a shop had discriminated against me because of my impairment I would tell my friends and family about it'.**
- **62% of disabled people agreed with the statement: 'If I felt a shop had discriminated against me because of my impairment, I would advise my friends and family not to shop there.'**

A series of systemic barriers to challenging discrimination mean that taking custom elsewhere and informing friends and family is often the most viable way of 'accommodating', rather than accepting, the status quo. Yet improving accessibility is not, and should not be perceived to be, 'bad for business'. With over 10 million disabled people in the UK, improving the accessibility of commercial premises and raising disability awareness amongst staff is actually likely to extend businesses' consumer base.

A 2002 study from the Department for Work and Pensions examined the costs and benefits for service providers of making reasonable adjustments[15]. The report, which was based on an extensive survey of large and small service providers, examined the varying costs of making different adjustments, and also the impact of those adjustments across a variety of different areas. The study reported that "for most kinds of adjustment the mean initial cost lay between £100 and £1,000" and that mean ongoing costs "for most adjustments lay below £100 per annum". The nature of the reasonable adjustment duty of course means that for a small business an extremely costly adjustment would not be considered reasonable. The report also reached a clear conclusion from service providers about the case for making adjustments:

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[15] DWP Research Report 169, 'Costs and benefits to service providers of making reasonable adjustments under Part III of the Disability Discrimination Act', Meager et al., DWP 2002

“The overall assessment of the vast majority of establishments which have made adjustments for disabled customers is that the associated benefits are greater than, or equal to, the costs.”

The case for equality in access is not just about safeguarding disabled people’s rights, it is clear that it can also benefit business, service providers and the economy.

The simplicity of the ‘business case’ for change was summed up by one of our interview participants:

“If we could get in your shop then we would spend money in there!”

Chapter 3 – Conclusion

Our research has compiled compelling evidence of both the scale and scope of accessibility problems faced by disabled people in the UK today. With 23% of disabled people in Britain reporting experiences of discrimination in accessing goods and services, and two in five (40%) able to identify difficulties they had experienced in the past year, it is clear that urgent action is required on the part of policy-makers to ensure that disabled people’s rights are genuinely protected in the way that the law intended.

Whilst Part 3 of the DDA and the reasonable adjustment duty have undoubtedly gone some way to improve access, the continuing ‘accessibility gap’ revealed by our research is a major concern, and suggests that current mechanisms to challenge discrimination are proving inadequate to sustain meaningful progress in this area. Alongside high levels of perceived discrimination and evidence of widespread access problems, our findings reveal a set of interlinked barriers that are actively preventing disabled people from enforcing their rights under the law. These barriers include low levels of awareness of the DDA, the complexity of the current system and enforcement mechanisms, the time, cost and stress involved in challenging unfair treatment, and a lack of legal advice or advocacy support. Our in depth interviews found that attitudinal factors were also holding disabled people back, notably the reluctance of service providers to modify their provisions or practices and a perception of the ineffectiveness of taking action.

The links between poor accessibility, social exclusion and poverty are well-documented. As such, ensuring equality in access for disabled people will constitute an important means of challenging disability poverty. Without addressing this issue, it is unlikely that the deep-rooted links between disability, poverty and exclusion will be broken.

Chapter 4 – Recommendations

How to improve the system

As noted in the introduction to this report, Leonard Cheshire Disability is supportive of the Equality Act. However, it is imperative that the Act addresses existing shortcomings in the way legislation works. The DDA provisions around access to goods and services are essentially replicated within the Equality Act, and so the issues around disabled people's ability to enforce their rights are likely to remain. In many areas improving this system does not mean actually changing the legislation itself – it means developing the appropriate regulations and guidance to implement better systems for disabled people to actually access their rights.

Participants in our qualitative interviews were asked what improvements they thought could be made to the current system in order to enhance the effectiveness of the law. These suggestions have informed a set of recommendations in this report.

Recommendation 1: As a first step, we would urge the Government to conduct a formal review examining the effectiveness of the law and how disabled people's access to their rights in this area can be improved. Our research indicates that there are a number of flaws in the current enforcement mechanisms under Part 3 of the DDA. As such we would be keen for a formal review to examine alternatives to the current system. This review should inform the development of future guidance and regulations, and examine in detail any areas where future extension or adjustment of the law may be necessary.

Whilst the current system for enforcing disabled people's rights to equal access to goods and services remains in place, an immediate concern is to improve the level of awareness of the law, and increase the support available to take action. Disabled people are twice as likely as non-disabled people to live in poverty, and far less likely to have any savings. The potential financial implications of taking legal action were identified in our research as one of the principle barriers to achieving change – more than half (57%) of disabled people stated that they did not think that they could afford to take legal action if they did experience discrimination. It will be important to ensure that the support systems that are in place for disabled people are better publicised and resources expanded.

Our survey suggested that the vast majority of disabled people are either not fully aware of what their rights are, or do not have the time, resources or support to actually take legal action against discrimination in this area. Taking action in these key areas has the potential to make a significant difference to the overall level of accessibility of goods and services in the UK, as at present there seems to be little additional pressure that can be brought to bear on those service providers who are not prepared to make necessary adjustments.

Recommendation 2: Work must be undertaken to raise awareness among disabled people of their rights under the law – the introduction of the Equality Act represents an excellent opportunity to raise awareness of what disabled people's rights are with regard to accessibility of goods and services.

Recommendation 3: The Government should work with the EHRC, the Legal Services Commission and any other bodies as appropriate to identify how to increase the support available to disabled people to be able to take accessibility cases.

A common view from our interview participants was that some sort of interim process was needed between raising an issue with a service provider and actually taking that service provider to court. Whilst a reasonable proportion of people were prepared to challenge discrimination when they faced it, almost none were prepared to take the risk of taking that complaint to court under the current system. It is this gap that is in large part responsible for the discrepancy between disabled people's rights and expectations, and the situation that people face in reality. Many participants felt that if there were some mechanism that did not involve the stress and financial risk of taking a court case, but did have some legal weight behind it, then the system would be immensely more effective.

In effect, however, some elements of this sort of system already exist within the law. Before bringing a complaint to court, a disabled person who believes they have been discriminated against under the services, premises and transport provisions of the DDA can find out more about the treatment that they believe is unlawful through the Questions Procedure. This takes the form of a questionnaire which is sent to the individual or organisation that is alleged to have discriminated, giving them opportunity to respond to the allegations made.

The Questions Procedure is intended to help a disabled person decide whether or not to bring legal proceedings and to help them present their complaint to the court in the most effective way. If a service provider fails to respond to the questions served by a disabled person then this failure will form part of the judgement in a court case. However, almost none of the participants in our depth interviews had any awareness of the Procedure.

At present the Questions Procedure can be all but hidden from anyone without a detailed knowledge of discrimination law. It is designed as the preliminary stage to court proceedings, rather than as a process that might achieve any outcome in its own right. There is no doubt that this role is important, but Leonard Cheshire Disability would argue that with some adjustments it could be possible to use the Questions Procedure as the basis for the sort of interim system that participants in our research identified as crucial. For example, some sort of formal arbitration service could be built in to the Questions Procedure. As part of the information gathering process a disabled person could be entitled to arrange an arbitration hearing at which an informal judgement could be reached as to what would constitute a reasonable adjustment in the particular case. There would be a number of different options as to how this sort of service could potentially be managed:

- by creating a specific Ombudsman-type body to work on cases;
- through the Equality and Human Rights Commission;
- through an existing conciliation service like ACAS;
- through creating an additional capacity within Local Authorities.

The enforcement mechanism for judgements reached through this route would remain action through a County Court (or equivalent). But as with the Questions Procedure now, the response of a service provider, and the information provided through this process would be taken into account in reaching a judgement in court – the information that could be taken into account would include the conciliation services recommendation for action.

This sort of process would give disabled people a more workable mechanism for challenging discrimination, whilst retaining the flexibility to take full legal action should either party be discontent with the solution proposed. It should reduce the necessity for legal action, helping judgements to be reached earlier, and help produce clarity for service providers as to their obligations.

At the very least increasing awareness of the Questions Procedure would at least give disabled people an additional route to applying pressure on service providers that refuse to make reasonable adjustments.

Recommendation 4: The Questions Procedure for Part 3 of the DDA must be better publicised. Any disabled person who has experienced discrimination whilst accessing goods and services should be able to find the relevant advice and be able to use the procedure to engage with a service provider.

Recommendation 5: A new, strengthened Questions Procedure that incorporates arbitration should be considered. If appropriate this system should be tested out in pilot areas so that the impact and any additional costs could be closely monitored.

Another of the stumbling blocks to achieving better access identified through this research is the sheer weight of burden that is placed on individual disabled people. The flexibility and individuality of the reasonable adjustment duty is an important aspect of anti-discrimination law, but our evidence suggests that too often this places a disproportionate burden on individuals to achieve any change. Whilst it is critically important that individuals can challenge any discrimination that they face, it becomes problematic when the sole responsibility for enforcing improved access rests with the individual – especially when the mechanisms for enforcement are so onerous. Consideration should be given to allowing some form of group or representative action on accessibility cases – so that disabled people can be more effectively supported through the legal process.

Recommendation 6: Consideration should be given to introducing the capacity for joint or representative actions on accessibility issues.

Some of the participants in our interviews felt that the court process itself was inaccessible for many disabled people – as such it was felt that any system that ultimately relied on enforcement through the courts would not work for some people:

"There needs to be an option between taking legal action and not doing anything – something more like an employment tribunal."

A solution that could help address this issue would be the introduction of 'Equality Tribunals' to take on Part 3 DDA cases. This would either involve the development of specialised tribunals within the Tribunals Service, or it would involve 'skilling-up' of existing employment tribunals to ensure that they could also take Part 3 DDA (and potentially other anti-discrimination) cases. In either case it would be likely that this would also require additional resources for the Tribunals Service to manage the transition.

It is also likely that this sort of change would require adjustments to the law itself to move legal responsibility to tribunals. Leonard Cheshire Disability would argue that tribunals could potentially make the legal system more accessible for disabled people, and through this improve the accessibility of the UK. There are potentially some logistical obstacles to making this approach work, but we would like to see a feasibility study conducted into shifting legal responsibility to tribunals, including examining how specialist 'Equality Tribunals' could be developed.

<u>Recommendation 7</u>: Consider the development of ‘Equality Tribunals’ to take over responsibility for hearing accessibility cases. The first stage in this process should be to conduct a feasibility study examining how such a process would work, what the impacts might be, and what cost and logistical issues there might be.

Regardless of the details of the enforcement mechanisms that are in place, the development of the Equality Act represents an excellent opportunity to ensure that service providers are aware of their responsibilities. Taking legal action is of course not the preferable solution for either disabled people or service providers – it is far preferable that service providers understand their legal responsibilities and act accordingly. The EHRC is already working on the guidance and codes of practice – as part of this process it will also be necessary to publicise rights and responsibilities widely. A clear process needs to be developed for engaging with service providers, raising awareness of their responsibilities and encouraging and supporting them to take action to improve accessibility.

<u>Recommendation 8</u>: The Government and the EHRC will need to work extensively with service providers in order to raise awareness of their legal obligations around providing equal access. This should include publicising new guidance and codes of practice, as well as considering any mechanisms to actively support service providers to make necessary adjustments.

Summary of key recommendations

- Conduct a formal review examining the effectiveness of the law and how disabled people's access to their rights in this area can be improved. This review should inform the development of future guidance and regulations, and examine in detail any areas where future extension or adjustment of the law may be necessary.
- Work must be undertaken to raise awareness among disabled people of their rights under the law.
- The Government should work with the EHRC, the Legal Services Commission and any other bodies as appropriate to identify how to increase the support available to disabled people to be able to take accessibility cases.
- The Questions Procedure for Part 3 of the DDA must be better publicised. Any disabled person who has experienced discrimination whilst accessing goods and services should be able to find the relevant advice and be able to use the procedure to engage with a service provider.
- A new, strengthened Questions Procedure that incorporates arbitration should be considered. If appropriate this system should be tested out in pilot areas so that the impact and any additional costs could be closely monitored.
- Consideration should be given to introducing the capacity for joint or representative actions on accessibility issues.
- Consider the development of 'Equality Tribunals' to take over responsibility for hearing accessibility cases.
- The Government and the EHRC will need to work extensively with service providers in order to raise awareness of their legal obligations around providing equal access.

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About Leonard Cheshire Disability

Leonard Cheshire Disability supports over 21,000 disabled people in the UK and works in 52 countries. We campaign for change and provide innovative services that give disabled people the opportunity to live life their way.

This report is available in alternative formats such as Braille, audio and largeprint. Please contact us to request a copy in an alternative format.

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