

**The Disability discrimination Act and Developments in Accessible Public
Transport in the UK**

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Paper presented at THREDBO7 2001: Molde, Norway

1. Introduction and background

In many of today's societies, more people are more mobile than they have ever been before. As people rely on being more and more mobile, and as the provision of goods, services and other facilities adapts to people's increased mobility, transport becomes more and more vital for accessing key activities. However, this then means that those who are excluded from transport and whose mobility is impaired in some way, are placed at an ever increasing disadvantage.

A recent study into Social inclusion and public transport use (DETR 2000a) identified four generic barriers: Affordability; acceptability; availability; and accessibility. The focus of this paper is on accessibility and mobility impairment as it relates, specifically, to disabled people. It is generally recognised that between 10-14% of society has some form of mobility impairment and, of this group, the majority are disabled people.

a 1990 survey found that 4 out of 5 disabled people interviewed had problems with transport and two-thirds said that difficulty with using public transport was one reason for not going out more and not travelling further afield (Which?, 1990). Furthermore, a literature review conducted in 1993 concluded that there was "a very considerable unmet need for mobility" among disabled people (Fowkes et al, 1993).

There are two broad streams of arguments for removing barriers reducing mobility impairment. Firstly, it is argued that, on principles of equity and human rights, people should expect society not to exclude them from the mainstream; not to construct barriers to their independence and, where barriers exist, to remove them. Secondly, it is argued that, on social welfare grounds, the benefits of removing barriers outweigh the costs of doing so. This paper focuses on the first of these broad arguments and the increasing trend towards governments seeking to pursue these principles via legislative means.

All ECMT member countries embrace the objective of improving access to transport for people with mobility impairments. Until recently progress has mostly been made via voluntary guidance and agreement. For example, the Disabled persons Transport Advisory committee (DPTAC), an advisory committee to the UK transport minister, has achieved much in the way of raising awareness of disability issues throughout the transport industry and, specifically, in terms of agreeing a voluntary set of design standards for accessible transport vehicles. Nevertheless, this objective of improving access to transport is increasingly being supported by the introduction of legislation (ECMT, 1999).

Thus, the UK Disability Discrimination Act (DDA), passed in 1995, is one of a growing number of examples of national legislation aimed at dismantling barriers to the full inclusion of disabled people within society and, in particular, transport.

The DDA places legal duties on service providers and other persons not to discriminate against disabled people in certain circumstances and gives powers to draw up regulations relating to enforceable standards for accessible public transport vehicles. Whilst the legislation was passed in 1995, a number of aspects of it's

implementation remained unclear for some time afterwards (Matthews, 1996). However, much of the detail regarding what the legislation will require has now been clarified and timetables for its implementation, stretching across the next two decades, have been put forward. Furthermore, in late 1997 a Disability Rights Task Force was established by the new government to review the DDA's provisions and to consider what further measures may be necessary to meet the new government's commitment to civil rights for disabled people. The task force's review has resulted in a government consultation, completed in June 2001, on how the Act might be enhanced. As a separate development, an enforcement agency, the Disability Rights Commission, has now been established.

This paper reviews the major developments in the implementation of the transport components of the DDA highlights the key implications of the Act for future provision and seeks to identify key lessons for the international community.

2. Disability and discrimination

Disability is often defined in either medical or social terms. The medical model defines disability in terms of the individual and how their impairment makes it difficult for them to do things. In contrast, the social model focuses on how society's attitudes and the way in which it organises and constructs itself disables people with impairments. Thus, a medical view of disability might contend that a person is disabled by their own inability to climb steps or read newsprint satisfactorily, where as a social view would argue that a person with an impairment is disabled as a result of steps having been built into a design or by newspapers being unavailable in alternative formats.

Our choice of perspective influences how we view disability issues and what we do about them. Viewing disability in medical terms might suggest that we should leave things to doctors or to medical science, despite the fact that, in the case of many disabled people, medical science can offer little or nothing in the way of remedies. Viewing disability as a social issue, on the other hand, suggests that policies and practical initiatives should be addressing society. Crucially, society is capable of being adjusted so as to enable and empower disabled people. Societal adjustments would include a greater awareness of disability, greater flexibility in the ways by which services are delivered to people and physical adjustments to existing and future components of the built environment.

Oliver and Barnes (Oliver and Barnes, 1991) identify 3 separate strands of unfair discrimination against disabled people:

Direct discrimination - treating some individuals less favorably than others, purely because of their disability;

Indirect discrimination - making something (such as a job, service or facility) available subject to a condition which makes it harder for disabled people to qualify than for those who are not disabled; [and]

Unequal burdens - failure to take reasonable steps to remove a handicap imposed by an individual's social or physical environment.

All three types of discrimination are present in transport and their effects are to limit the mobility of disabled people and their access to the range of services and activities which contribute to quality of life. The most obvious form of discrimination within the public transport field is that of unequal burdens. The presence of steps within stations and vehicles, the unprotected horizontal and vertical gaps at the interface between bus stops and buses and between rail platforms and trains and the absence of suitable audio information are examples of these unequal burdens. In part they reflect the long-lived nature of transport infrastructure and vehicles but they also serve to illustrate how the design of public transport has become what it is today often by a somewhat inadequate process of evolution rather than by being systematically redesigned for the demands of modern society.

Increasingly, individual systems, parts of systems and particular initiatives can be cited which demonstrate that many transport access problems are solvable. For example, many modern light rail systems such as the VAL in Lille are designed with step-free access, wide doorways and gangways and clear written, audio and tactile information. A number of accessible bus demonstration projects now also exist, eg in North Tyneside near Newcastle-upon-tyne, whereby local authorities have undertaken work to improve the bus stop environment whilst the bus operators have introduced low-floor buses; these initiatives often prove even more successful with non-disabled mobility impaired people, eg parents with prams and people with shopping, than with disabled people.

Whilst unequal burdens might be the most obvious form of discrimination with regard to transport, the existence and impacts of direct and indirect discrimination should not be overlooked. The attitudes and awareness of staff and the practices and procedures of transport organisations towards their customers can also have a bearing on disabled people. A patronising or unhelpful bus driver can be almost as much of a barrier as a flight of stairs or a narrow doorway. Much has been achieved in this area through staff training and awareness-raising, though this often overlooks the more organisational aspects.

3. The Disability Discrimination Act and it's Public transport provisions

Firstly, the DDA defines disabled people as those who have, or who have had, "either a physical or a mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities" (DDA 1995). The Disability rights Task force estimate that this definition includes approximately 10 million people in the UK. However, there are fears that it excludes certain groups of disabled people, including those with mental health problems, asthma, diabetes or epilepsy.

Secondly, the act defines discrimination as either "less favourable treatment for a reason related to a persons disability which cannot be justified under the Act" (DDA 1995) or a failure to comply with a duty to provide reasonable adjustment" (DDA

1995). What is justified and what is reasonable, however, varies between the different sections of the Act, making it difficult for a clear principle to be established. It is not clear whether this definition is equally or less comprehensive than that cited above.

The DDA deals separately with, on the one hand, transport infrastructure and associated services, and, on the other hand, transport vehicles. Infrastructure, including bus stations and stops, rail stations, airports and ferry terminals, falls within part III of the Act, relating to access to goods, services and facilities. Also included in this section are the more general customer services aspects of transport, such as information provision. Part V of the Act, focuses solely upon access to transport vehicles.

The approaches of part iii and part v of the Act are quite different. Part III of the Act places a series of duties on the providers of goods, services and facilities not to discriminate against disabled people in the provision of their goods, services and facilities. In general, this part of the DDA follows “a general [civil rights] interpretation leaving the provider or operator of a service to determine what is reasonable” (Frye, 1996). Part V does not lay down any rights as such; instead it gives power to the government to draw up technical regulations defining vehicle accessibility appropriate to each mode covered within the Act.

The provisions of part V relate to domestic land based public passenger transport, which means railways, buses and coaches (PCVs) and taxis. Aircraft and shipping are not included in the scope of the Act on the grounds that they are international modes of transport, despite there having been considerable growth in the domestic airline market over recent years and there being a number of areas within the UK, eg the islands of Scotland, where there is a strong reliance on ferry transport. Two further restrictions are that only scheduled or, in the case of taxis, licensed services are covered and regulations will only apply to new vehicles.

The duties on service providers and other persons are being phased in. Since December 1996, it has been unlawful for service providers to treat disabled people less favourably for a reason related to their disability. This would appear to be aiming to address ‘direct’ discrimination as referred to and defined above. Furthermore, from October 1999, service providers have had to make “reasonable adjustments” for disabled people, such as providing extra help or making changes to the way they provide their services. This would appear to be aimed at addressing ‘indirect’ discrimination as referred to and defined above. In both cases, detailed ‘codes of practice’ have been issued by government which seek to clarify the nature, extent and implications of the duties. The intention is that, from 2004, service providers will also have to make “reasonable adjustments” to the physical features of their premises to overcome physical barriers to access. To re-enforce this third duty, the government have pledged themselves to making accessibility a condition of any new transport investment (DETR, 2000b).

The regulations relating to taxis, railway rolling stock and buses and coaches have been drawn up and, in the case of buses and railway rolling stock, are now in force. A

timetable for the application of the regulations relating to buses and coaches has also been set out.

The rail section of part V is the only example where a date was already set in the primary legislation; all rail, including tram, vehicles to come into service after December 31st 1998 must be accessible. The technical regulations essentially defining what is accessible were, after widespread consultation, published in 1998 and there are currently approximately 250 in-service rail vehicles which are DDA compliant.

A major difficulty, particularly given the approach of the DDA, is posed by the gap between the platform and the train. The duty to bridge this gap has been placed upon the train operator, though they are free to contract this out to the station operator. Where new facilities are built, particular in the case of underground and light rail, the aim, though not necessarily the requirement, will be to reduce the gaps so as to enable level access. However, this will not always be possible and it is highly likely that the principal solutions to this problem will involve ramps and lifts.

In the area of public service vehicles (PSVs) proposals have taken longer to develop and will be implemented over a longer time period. The government's view until very recently was that many of the technical and operational issues regarding accessible buses remained unresolved. Therefore, two working parties were set up immediately following the passage of the DDA; one looking at these technical issues and the other looking into economic and use issues. Significant problems were envisaged, specifically relating to capacity and viability, when it came to addressing minibuses, double-decker buses and inter-urban coaches, eg low floor double-decker buses are still not fully developed. Furthermore, car-parking at bus stops is still a significant problem and bus stop infrastructure is often unfriendly towards mobility-impaired people and low floor buses, particularly in rural areas. Nevertheless, the public service vehicle accessibility regulations were published, following widespread consultation, in 1999 and from 31 December 2000 have applied to all new buses and coaches with more than 22 passengers on local and scheduled services.

The regulations relating to taxis will represent "the most radical and far reaching changes in the transport field" (Frye, 1996). The expectation is that all licensed taxis in the UK will be required to accommodate wheel chair users; perhaps because of their more radical nature, these regulations appear to have been the most difficult to bring forward for consultation, this first having been expected to take place in 1996 and now scheduled for this year. The regulations will not require all taxis to be of the traditional London type. Instead, performance requirements will be set which may be met by a number of different vehicles. Exemptions will be available, eg where it can be shown both that there is no need for [wheelchair] accessible taxis...and that to introduce them would severely jeopardise the taxi industry in that locality (Frye 1996). Separately, regulations requiring drivers of licensed taxis to carry, free of charge, guide, hearing and certain other service animals accompanying disabled people have been in force since 31 March 2001.

Cut-off dates, by which time disabled people could expect to see accessible transport systems are not set in the actual legislation itself. Whilst the bus and coach

regulations have specified cut-off dates, the railway regulations have not done so and it is unclear as to whether the taxi regulations will do so.

Enforcement of part III of the Act was, at first, left to the individual through the civil courts. The government encourages out of court settlements but beyond this, the intention was that cases will be kept to the small claims court (and the Sheriff's court in Scotland). Damages are awardable as well as injunctions against the non-complying organisation but, as it is the small claims court, legal aid is not available, there is limited scope for appeal and, fundamentally, awards will be small. In the case of the transport regulations arising from part V of the Act, it appears that the relevant government ministry will take responsibility for enforcement and levying fines upon organisations found not to be complying. More recently, the Disability Rights Commission (DRC) was brought into being just over a year ago. In principle this represents a significant step forward in terms of enforcement, though in practice it is too early to judge what impact the commission will have in the transport sector.

4. Future developments –

The first set of future developments are those which the government is already committed to take forward as part of the existing legislation. These are threefold: Firstly there will be the phased implementation of the accessibility regulations relating to different types of public service vehicles, culminating with those which apply to long distance coaches; secondly, there will be the consultation and introduction of the accessibility regulations relating to taxis; and thirdly there will be the third set of duties to be placed on providers of goods, services and facilities, whereby they will be required to make reasonable physical adjustments so as to remove physical barriers to access.

Furthermore, the government has now published its response to the Disability Rights Task force's assessment of the Disability Discrimination Act (DRTF, 1999). In this they indicate in what ways they intend to amend or extend the existing legislation and in what ways they might seek to complement its provisions. This response was issued as a consultation document (DFEE, 2001), the consultation period for which has recently closed. Focusing on those recommendations relating to public transport provision, the government appear to agree with the task force's conclusions and have committed themselves to consult further on two of the task force's specific recommendations.

firstly, the task force recommended that an 'end date' by which time all rail vehicles should comply with the rail accessibility regulations should be consulted on and then introduced. Furthermore, accessibility regulations covering the refurbishment of existing rail vehicles should be issued for consultation and then introduced. Secondly, the task force recommended that transport operators should no longer be exempt from the first two sets of duties under part iii of the Act. It is not yet clear when the government propose to consult further on these issues.

The Disability Rights Task Force further recommended that the Disability Rights Commission and the Disabled Persons Transport Advisory Committee should

consider ways of increasing the availability of accessible private hire vehicles which are currently excluded from the scope of the DDA. The government has indicated that this consideration will indeed go ahead and that the industry itself should be involved.

In respect of aviation, which is only partially covered within the scope of the DDA, the government has established a group to develop a Code of Practice on access for disabled people to air travel for public consultation. Again, the government has indicated that they agree with the disability rights Task Force's recommendation for them to take a reserve power to give the Code statutory backing if agreement and compliance cannot be achieved on a voluntary basis.

There are two existing sets of guidance on access for disabled people to shipping, which is again only partially covered within the scope of the DDA; a recent set produced by the disabled Persons Transport Advisory Committee and a more established set produced by the International Maritime Organisation. Responding to the Disability rights Task Force's recommendation, the government has agreed to undertake a review of access arrangements.

Future developments somewhat outside of the legislative process include The monitoring of the effectiveness of local transport plans in meeting disabled people's transport needs, the development of guidance for providers of pedestrian and transport infrastructures to help them plan and design to meet the access needs of disabled people and the new national minimum standard for local authority concessionary travel schemes. The latter initiative will ensure that certain groups of disabled people will be entitled to at least half fares on public transport in their local area.

5. Discussion

This paper has outlined some of the background to the DDA and its transport provisions and has set out some of the expected future developments. The process of clarifying and giving detail to the legislation has been a prolonged one but now appears to be coming to an end. Two of the three sets of duties being placed on providers of goods, services and facilities are in force with detailed codes of practice to explain their nature and extent. Accessibility regulations for rail and public service vehicles are in force and those relating to taxis are soon to be consulted upon. In the meantime, an enforcement agency has been introduced and proposals are now being brought forward to further develop the scope of the legislation.

A number of concerns remain. In general, there are concerns with respect to whether or not all disabled people are properly included within the scope of the legislation and whether or not it outlaws all forms of unfair discrimination. More specifically, there are concerns that the legislation does not cover all modes of transport and that some of the timescales for action stretch for many years into the future. In addition and somewhat by way of contrast, the public transport industry has expressed concerns with respect to the costs of compliance and with respect to unfair competition in the long distance travel market as the DDA will place extra regulations upon UK public transport operators in comparison with European operators.

The duties being placed on providers of goods, services and facilities, as they relate to access to transport facilities, could have significant effects on local authorities and other infrastructure service-providers, particularly as of 2004 when they will be required to make reasonable adjustments to remove physical barriers. Local authorities have a key role in improving access to elements of the trip chain which are often ignored: accessible information; well-maintained footways; and accessible bus stops. These aspects will be important in taking advantage of the accessible vehicles emerging out of the DDA's accessibility regulations.

Action under the DDA within the rail sector has started to take effect already, though impacts within the bus and coach sectors may take longer to feed through. Perhaps the most sweeping impacts will relate to licensed taxis. It is already illegal to refuse or charge extra to guide dog or other service animal users. Furthermore, the forthcoming accessibility regulations should mean that, within about 5-7 years nearly all licensed taxis will be wheelchair accessible. One very possible effect of these requirements upon licensed taxis is that we will see a leakage from the licensed to the unlicensed sector. This is, if anywhere, likely to be more visible in more rural areas where the requirement involves a more radical change to the taxi fleet. Alternatively, some argue that fully-accessible taxi fleets offer taxi companies/drivers new market opportunities, particularly within the health, education social services and traditional community transport sectors. It is increasingly recognised that efficiencies and improvements can often be made in these areas and both taxi operators and local authorities should consider these new opportunities.

However, developing and implementing the legislation needs to be supported through effective enforcement and relevant complementary measures to assist disabled people's movement into the mainstream. Whilst we await to see the impact of the Disability Rights Commission on enforcement, we hope that government and other agencies will introduce the necessary complementary measures to take best advantage of the legislation.

6. Lessons

- The 'mobility culture' makes transport a vital service for accessing goods, services and facilities;
- In this 'mobility culture', excluding people from mainstream transport then excludes them from accessing other goods, services and facilities;
- Enabling disabled people to access goods, services and facilities with supplementary, specialist transport services or via direct provision to their homes is expensive and segregational;
- Reducing the need to travel, via sustainable, integrated transport and land-use planning, will benefit disabled people as it reduces their dependence on a system which is inaccessible to them;

- Voluntary design and service codes can foster support but, on their own, are unlikely to deliver an accessible transport system;
- Demonstration projects can provide evidence of the benefits, not only to disabled people but also to other people with mobility impairments;
- Legislation needs to consider the whole range of transport – can't exclude the vehicles;
- The different aspects of the transport system, with their different requirements for being made accessible, need to be recognised;
- Phasing can help to make the process more manageable but phasing and end-dates should be made clear so as to manage expectations;
- All dimensions of discrimination should be addressed – direct, indirect and unequal burdens;
- Providing people with rights is necessary but not sufficient;
- When it comes to direct and indirect discrimination, codes of practice and disability equality training will be important;
- When it comes to unequal burdens and the physical transport infrastructure, design regulations and guidelines will be very important to assist the industry in becoming more accessible;
- The development of codes of practice, training initiatives, regulations and guidelines should involve disabled people and the transport industry together;
- An enforcement agency will help to ensure that individual cases of discrimination do not go unchallenged and will help in implementation
- Governments need to listen closely to and consult with disabled people and the transport industry;
- Effective monitoring of the implementation and impacts of the legislation should be conducted so as to ensure that the intended consequences are occurring and that there are no harmful unintended consequences – this should include impacts on disabled people's travel as well as impacts on the viability of the transport industry;
- Complementary measures are required to assist disabled people transfer from specialist to mainstream transport services;
- The role of specialist transport services requires re-examination so that it can meet the residual special needs of disabled people in the most efficient way;

- Further research is needed to develop design technologies, empowerment training and what remaining unmet need exists;

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