

# Human Rights Convention

Civil & political liberties in England & Wales

Access denied

Human rights and disabled people

BCODP

## Credits

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# **Liberty's Human Rights Convention**

To live in true equality we must have rights which are guaranteed in law. At present the UK -almost alone amongst the pluralist democracies - does not have a Bill of Rights. Liberty's Human Rights Convention aims to focus public attention both on the Government's failure to uphold our fundamental rights and the importance of protecting these rights properly in law. A major initiative shaping Liberty's work programme over the next two years, one of the Convention's main objectives is to broaden popular support for rights in this country, making 'rights' a key theme for the 90s. If we take our rights seriously, so too will our rulers.

Working with other rights groups is also vital to the success of the Rights Convention. Organised pressure will have a much greater impact than a series of separate initiatives; together we can draw on the specific expertise of individual groups, address the crucial issues and demand appropriate change.

Every five years the United Nations Human Rights Committee examines the human rights records of all signatory states. The UK Government is due for its next review in 1994. This is one of a series of reports being produced jointly with other, specialist organisations to be submitted both to the Government and to the UN. Exposing common breaches of internationally agreed human rights standards in Britain, this Alternative Report will help put pressure on the Government to improve those standards and help encourage a lasting and effective popular culture of rights in this country.

## **Join us!**

This project is supported by Anti-Racist Alliance, Article 19, British Council of Organisations of Disabled People, Campaign for Freedom of Information, Campaign for Press and Broadcasting Freedom, Change, Charter 88, the Fawcett Society, Institute of Employment Rights, joint Council for the Welfare of Immigrants, Law Centres Federation, MIND, Prison Reform Trust, Refugee Council, Scottish Council for Civil Liberties, Society of Black Lawyers, Southall Black Sisters, Stonewall, UK Forum on HIV and Human Rights.

## **Section one: the background to this report**

### **Wrecking civil rights: the government and disabled people**

In May 1994 the Civil Rights (Disabled Persons) Bill, which sought to outlaw discrimination against disabled people in Britain, was prevented from becoming law by a series of parliamentary manoeuvres. <sup>1</sup>

A group of back-bench Conservative MPs tabled last minute lengthy amendments, made deliberately long speeches and manipulated the quorum count to talk the Bill out of parliamentary time. Although they repeatedly denied that they were acting on the government's behalf, <sup>2</sup> this was shown to be untrue. The Minister with responsibility for disabled issues, Nicholas Scott MP, was forced to admit that he had misled the House of Commons <sup>3</sup> while one of the MPs earned a rebuke from the Speaker of the House.<sup>4</sup> During ill-tempered exchanges one Conservative supporter of the Bill, Terry Dicks MP, accused one of his colleagues of "telling a pack of lies".<sup>5</sup>

These tactics caused particular outrage because the Bill had previously received unanimous all-party support in its progress through parliament. In moving the Bill's second reading, its sponsor, Roger Berry: MP, said that the measures were-"not about charity, being paternalistic or ... being nice to disabled people. It is about rights. The Bill's purpose is to ensure that the disabled have the same rights as everyone else in employment, housing, education, public transport and the provision of other goods and services. It is certain that the Bill, or something like it, will eventually reach the statute books. When that happens, we shall look back and wonder why on earth that took so long - why, in 1994, we had to spend time debating whether or not 6.5 million people in this country should have the right to protection against discrimination."<sup>6</sup>

He noted that a quarter of a million postcards supporting the Bill had been sent to MPs and that of the thousands of letters and telephone calls he had received not a single one opposed it.<sup>7</sup> The Bill also had the support of a clear majority in the House of Commons -310 MPs signed an Early Day Motion in support of the Bill while a further 20 front bench Members gave their approval in writing. <sup>8</sup> MPs from all parties spoke in favour and not one in opposition.

According to an anonymous document -apparently emanating from a government department -opposition to the Bill was based on the grounds that it:

would potentially result. ..in massive costs to the tax payer) business and the community. ..estimated to run into many billions of pounds.<sup>9</sup>

The document listed three examples of the costs of converting railway stations, schools and cinemas so that they were accessible to disabled people. It was this argument which was to prove crucial in defeating the Bill.

In July 1994 the government published a consultation paper setting out its alternative to the Bill. <sup>10</sup> The paper proposes an extremely limited form of protection for people with "substantial" disability against "unjustifiable" discrimination. It also proposes the abolition of the statutory quota on firms to employ a minimum of three registered disabled employees, consideration of new requirements in the design of new dwellings to promote greater accessibility, a code of good practice by banks, insurers and financial groups in relation to their disabled customers and the establishment of a new advisory body, the National Disability Council. Much of the lengthy paper is devoted to attacking the Bill which it says failed to take account of business concerns and would have been too costly. Rejecting what it describes as "sweeping" legislation it instead proposes "educating and persuading" people "to change attitudes and actions that adversely affect disabled people." <sup>11</sup>

The paper estimated that its proposals would cost about £17 million to introduce, compared to its estimate of £17 billion for implementing the Bill. However, although an official government report first recommended anti-discrimination legislation in 1982, no cost-benefit analysis of the Bill's proposals has ever been undertaken and the government has admitted that it has no idea of the costs of carrying out such measures.<sup>12</sup>

Research in the United States has shown that anti-discrimination legislation is largely cost-effective as it enables disabled people to become both more economically active and more independent. <sup>13</sup> And, although it is clear that while the United States disability legislation has cost some money to implement, these costs have not been anywhere near as large as opponents of the legislation had feared. Also, no companies have been made bankrupt by the legislation and some have found that making themselves more accessible has dramatically increased their profitability .<sup>14</sup> The costs have also been offset against significant savings to the US government's social security and social services budgets. President Bush, who signed the Americans With Disabilities Act 1990, commented that:

When you add together state, local and private funds, it costs almost £200 billion annually to support Americans with disabilities, in effect to keep them dependent. <sup>15</sup>

The scarcity of research in Britain illustrates the low priority which the government gives to disabled people's rights. The misinformation circulated during the debate, the government's wrecking tactics and the disingenuousness of the responsible minister confirm this general disregard. It obviously does not believe that its continued tolerance of discrimination against disabled people carries a political price.

This was the 16th attempt to introduce some form of anti-discrimination law for disabled people and the 13th time that such a Bill had been blocked in parliament. Inevitably, frustration at the government's tactics is increasing,<sup>16</sup> especially as it has ignored calls for Nicholas Scott's resignation despite the fact that Ministers who are found to have misled the House of Commons are usually expected to relinquish their posts. <sup>17</sup>

On 23 May 1994 a group of disabled activists abandoned their wheelchairs and crawled into the House of Commons in an attempt to lobby their MPs. They were turned away at the normal public entrance - which is inaccessible to wheelchair users - and it took five hours before they were allowed into the parliamentary lobby. <sup>18</sup> The right of members of the public to petition parliament and lobby individual MPs is a long established one.<sup>19</sup> However, disabled people who use wheelchairs or have mobility difficulties cannot enter the public entrance without assistance and are refused entry by the Sergeant at Arms unless they have made a prior arrangement with an individual MP. Such discriminatory practices permeate British society.

There is overwhelming evidence that disabled people experience severe economic and social deprivation and are disadvantaged in British society in a number of ways. <sup>20</sup> There are higher rates of unemployment among disabled people and those out of work are likely to be unemployed for longer periods than non-disabled people. When they do find work it is often low paid, low status and in poor working conditions. They are under-represented in professional and managerial jobs, on average earn less than non-disabled people and are more likely to live in poverty. Disabled people receive inferior education, leave school with fewer qualifications and are more likely than non-disabled people to be forced into dependency on welfare benefits. The values and practices of the health and



welfare systems infringe the personal autonomy, privacy and independence of disabled people.<sup>21</sup>

The role of the state and public welfare in compounding disadvantage and discrimination against disabled people in Britain remains a contentious subject.<sup>22</sup> Disabled people are vastly under-represented in public life and lack access to decision-making power in many areas of society. Disabled people's organisations have identified institutional discrimination as the main problem affecting them and are demanding legal protection against unfair treatment as part of a growing campaign for equal civil and political rights.<sup>23</sup> This campaign is led by disabled people and challenges the traditional philanthropic and welfarist attitudes towards people with disabilities. It favours self-organisation, self determination, empowerment and basic human rights.

## **International law**

The United Nations (UN), has laid down minimum standards for the treatment of all human beings. The fundamental principles are embodied in the International Bill of Rights which consists of three documents:

- The Universal Declaration of Human Rights
- The Covenant on Civil and Political Rights (the ICCPR), with an Optional Protocol
- The Covenant on Social and Economic Rights.

The 1948 Universal Declaration of Human Rights provides guiding principles only but the 1966 ICCPR is a legally binding treaty. All signatories to the ICCPR are subject to a five-yearly review by the UN Human Rights Committee, which scrutinizes their records against the standards laid down in the ICCPR.

Governments are required to submit factual reports outlining how they are fulfilling their requirements and their representatives can be cross-questioned by members of the Committee. The Committee's final report, although not binding, is taken seriously by the government concerned which will attempt to address the areas highlighted by the Committee.

The United Kingdom (UK) is a party to the ICCPR but has declined to adopt the Optional Protocol.<sup>24</sup> Consequently, individuals cannot directly petition the Human Rights Committee to consider claims of violations of rights set out in the ICCPR.

The UK does not have a written constitution or bill of rights and, while it is internationally bound by the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR), this has not been incorporated into domestic law and therefore has only limited applicability, as an aid to interpretation, in British domestic courts.<sup>25</sup> Where British legislation violates the provisions of the ECHR, aggrieved persons must first exhaust their domestic remedies, a process which may take years, before they can complain to the European Commission on Human Rights. Although findings against Britain can lead to changes in the law, the process is very lengthy. <sup>26</sup>

## **Section two: articles of the International Covenant on Civil and Political Rights**

### **Discrimination**

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.  
(Article 2)

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.  
(Article 26)

Article 2 of the ICCPR outlaws discriminatory laws and practices with respect to the rights guaranteed elsewhere in the Covenant. Article 26 reinforces and extends this protection. It not only entitles all persons to equality before the law and equal protection from the law, it also prohibits any discrimination under the law. It seeks to guarantee to all persons equal and effective protection against discrimination on any grounds.<sup>27</sup> There are no circumstances under which governments may derogate from this obligation.<sup>28</sup> Governments are encouraged to take positive steps to diminish or eliminate conditions which cause or help to perpetuate discrimination.<sup>29</sup>

While Article 2 limits the scope of this protection to those rights contained within the ICCPR, Article 26 sets out the right of all people not to be discriminated against, in law or in practice, in any area of life that is regulated and protected by the public authorities. <sup>30</sup>

## **Public Participation**

Everyone shall have the right to freedom of expression; this right shall include the right to seek, receive and impart information and ideas of all kinds. ...

(Article 19)

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without any unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the electors;

(c) To have access, on general terms of equality, to public service in his country.

(Article 25)

The Committee has specified that the right to participation in public life "must be guaranteed without reasonable restrictions, as well as on a non-discriminatory basis on the grounds set forth in Article 2."<sup>31</sup> The Committee has also called for government reports to show how the principle of non-discrimination is being observed and that "every citizen's equal opportunity to take part in the conduct of public affairs" is being ensured.<sup>32</sup> Article 19 upholds the right of people to freedom of expression.

## **Freedom of movement**

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residency.

(Article 12)

The right of peaceful assembly shall be recognised ... (Article 21)

Everyone shall have the right of freedom of association with others. ..

(Article 22)

Articles 21 and 22 recognise the rights of freedom of assembly and freedom of association for political or other purposes. Article 12 is primarily aimed at governing the treatment of aliens and legal restrictions on freedom of movement. The Committee has called for governments to provide detailed information about the laws and practices concerning people's rights to engage in political activities and to join and form trade unions. In its commentary to Article 22 the Committee calls on governments to take active steps to encourage groups which work for the promotion of human rights.<sup>33</sup>

## **Criminal justice and the rights of people in detention**

Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

(Article 9)

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights or obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal. ..

(Article 14)

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

(Article 7)

All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.

(Article 10)

Articles 9 and 14 prohibit arbitrary arrests and detentions and safeguard the right of people accused of a crime to a fair trial. The Human Rights Committee has pointed out that the provision in Article 9 is applicable to all deprivations of liberty, whether because of alleged criminal activity or for other reasons, such as "mental illness, vagrancy, drug addiction, educational purposes and immigration control."<sup>34</sup>

The provisions of Article 14 apply to all courts and tribunals, covering both criminal and civil law.<sup>35</sup> The Committee has requested more detailed information from governments "on the steps taken to ensure that equality before the courts, including equal access to the courts, fair and public hearings and competence, impartiality and independence of the judiciary are established by law and guaranteed by practice."<sup>36</sup> Among the minimum guarantees in criminal proceedings requested by the Committee are "the right of everyone to be informed in a language which he understands of the charges against him", and the free services of an interpreter if necessary.<sup>37</sup>

The Human Rights Committee has specified that the protection afforded by Article 7 extends to "pupils and patients in educational and medical institutions."<sup>38</sup> It has also stated that it is the duty of the authorities "to ensure protection of the law against such treatment even when committed by persons acting outside or without any official authority."<sup>39</sup> The Committee has also stated that the provisions of Article 7 are supplemented by the positive requirements in Article 10.<sup>40</sup> In its commentary to Article 10 the Committee has stated that "humane treatment and respect for the dignity of all persons deprived of their liberty is a basic standard of universal application which cannot depend entirely on material resources."<sup>41</sup> These Articles cannot be derogated from even in a state of emergency.

## **Right of privacy**

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.  
(Article 17)

Article 17 provides for protection against arbitrary or unlawful interference with people's privacy, family, home or correspondence and against attacks on their honour or reputation. Governments are required to guarantee this right against all such interferences whether they emanate from state authorities or other sources.<sup>42</sup> The Committee has stated that the term "family" should be given a broad interpretation<sup>43</sup> and has recognised that the concept of family is too broad to be given a standard definition.<sup>44</sup>

## Section Three: the government's record

### The historical background

While the focus of this report is the British government's record over the last five years, a brief mention of previous developments is necessary in order to properly explain the nature of the campaign by disabled people for equal rights.

In 1979, pressure from a variety of organisations of disabled people forced the then Labour Government to establish the Committee on Restrictions Against Disabled people (CORAD). CORAD's report, published in 1982, is the only official report on discrimination and disability<sup>45</sup> that has ever been received by the British government. It examined a wide range of issues including access to public buildings and transport systems and the rights of disabled people in education, employment and entertainment. It found discrimination to be commonplace and made a number of recommendations for improving public attitudes towards disabled people. It also endorsed the call for anti-discrimination legislation to provide disabled people with a legal mechanism for securing equal rights. However, the report's findings were dismissed by the (by then Conservative) government.

During the 1980s two government-backed surveys have reported high levels of unemployment and poverty amongst disabled people. The Office of Population Censuses and Surveys (OPCS) produced six reports from a survey carried out between 1985 and 1988<sup>46</sup> and the Department of Employment commissioned a separate study by Social and Community Planning Research (SCPR) which reported in 1990.<sup>47</sup> Although both reports have been challenged for underestimating the disadvantage suffered by disabled people,<sup>48</sup> they did confirm that the disabled have a substantially poorer quality of life than the rest of the population.

The government's argument that such disadvantage is not caused by discrimination have become increasingly threadbare in the light of growing pressure from disabled people's organisations. Vigorous civil rights campaigns in the 1980s and early 1990s have confronted discrimination directly using a range of tactics such as direct action and civil disobedience. The British Council of Organisations of Disabled People (BCODP) was formed in 1981 to harness a growing rights consciousness amongst disabled people. It grew rapidly over the following decade and by 1991 represented 75 separate organisations and about 200,000 individuals. It also published its own study in 1991 examining the nature and extent of discrimination against disabled people.<sup>49</sup>

In 1985 a new umbrella body, the Voluntary Organisations for Anti-Discrimination Legislation committee (VOADL), was established by organisations which are representative of disabled people and those which worked with them in a more traditional manner, to press for legally enforceable equal rights. In 1994 this umbrella organisation became Rights Now.

The call for anti-discrimination legislation has wide-ranging public support and is backed by a growing volume of academic research. It is also inspired by the examples of other countries which have introduced anti-discrimination legislation and overcame those problems -such as cost -which opponents of a new law in Britain suggest are insurmountable.

Discrimination prevents many disabled people from participating in the labour market and forces them into financial and social dependency on the state.<sup>50</sup> As the populations of advanced countries are ageing, and because both the incidence and severity of disability increases with age,<sup>51</sup> a growing proportion of those countries' populations is likely-to be physically impaired. It has been estimated that in Britain by the year 2031 the size of the disabled population will have grown to about 8.2 million adults representing an increase of 34 per cent from 1986.<sup>52</sup> Increasingly, therefore, countries with advanced market economies are needing to instigate specific measures to enable disabled people to enjoy equal rights and so be more economically active. Denying an increasing proportion of the population access to the built environment -transport, housing, businesses and facilities -carries with it a social cost which is not only morally indefensible but economically counter., productive.

It is against this national and international background that the British government's efforts should be examined.

## **Slow progress**

The British government's Third Periodic Report to the UN Human Rights Committee contained no reference to its treatment of disabled people.

However, there have been some positive developments. In 1990, the government published a consultation document which reviewed the effectiveness of the Disabled Persons (Employment) Act 1944.<sup>53</sup> In the same year the government revised its voluntary code of practice -first- launched in 1984 -which calls on employers to encourage applications for employment from disabled people and to



give greater consideration to the representation of disabled people in their workforces. The government claims that the number of companies displaying a good practice symbol of two ticks, illustrating their adherence to the code, doubled between October 1993 and March 1994.<sup>54</sup>

The Companies Act 1985 requires companies employing more than 250 employees to set out their policies on recruitment, training and career development for disabled workers in their annual reports, although this can be limited to a single statement and has been criticised as inadequate by the Trade Union Congress.<sup>55</sup> Also in 1985 the government established the Disabled Persons Transport Advisory Committee to provide "informal advice and guidance" to the Department of Transport about making transport systems more accessible. The Disabled Persons (Services, Consultation and "Representation") Act 1986 gives disabled people in hospitals or long term educational institutions the right to a statement and an assessment of their likely needs in the community. It also places a duty on local authorities to provide disabled people with information. However, much of this legislation has yet to be enforced and remains primarily a statement of intent.

Additionally, since 1944, all firms with over 20 employees have been required to ensure that a minimum of three per cent of their workforce are disabled people. The effectiveness of this provision -which the government's latest consultation paper now proposes to abolish -will be discussed in the section of this report on employment.

In the debate on the Civil Rights (Disabled Persons) Bill in March 1994, the Minister for Disabled People, Nicholas Scott, claimed there had been "significant recent progress in the arrangements for children with special educational needs, including those with disabilities" and that the government would shortly be publishing a code of practice on the identification and assessment of special educational needs.<sup>56</sup> He also said that bus drivers and conductors were receiving training about the needs of disabled passengers, that since January 1994 some London Transport buses were now accessible to wheelchair users and that all railway rolling stock now being built is wheelchair accessible. He acknowledged that the London Underground is "a long way from [being] a fully accessible system" but said that a free access guide was now being produced. The Minister also spoke of the government's commitment to education and persuasion in preventing direct discrimination by employers and service providers and of its intention to make museums, galleries, cinemas and shops accessible to disabled people.<sup>57</sup>

However, the government's achievements must be seen in the context of:

- the growing campaign for civil rights by disabled people
- the increasing volume of evidence which details the nature and extent of discrimination against disabled people
- the legislative models for countering discrimination adopted by other countries.

In this light, the British government's achievements appear modest and the rate of progress frustratingly slow.

## **Section Four: disabled people and discrimination in Britain**

Although the ICCPR does not specifically refer to disability, the protection it provides against discrimination is sufficient to include disabled people. Article 2 prohibits discriminatory application of the other rights contained within the ICCPR and Article 26 prohibits all forms of discrimination and guarantees protection against discrimination on any grounds. To comply with these provisions governments must ensure that people are not discriminated against in being denied civil and political rights and that they have effective legal redress against discrimination in areas of social and economic life, such as employment, housing and welfare provision.

According to the OPCS survey, there are just over six million disabled adults in Britain and about 14 per cent of the adult population have at least one impairment which causes disability.<sup>58</sup> About 140,000 disabled adults live in some kind of communal establishment.<sup>59</sup> The study also estimates that there are 500,000 people with hearing impairments, about one million blind people and a further two million who are partially sighted. There are an estimated four million people with mobility problems - about 500,000 people use wheelchairs on a daily basis while up to a million use wheelchairs some of the time. Around 500,000 people have a learning disability.

Additionally, there are 21,000 people who are known to be HIV positive -although this is probably an under-estimation - and over 8,500 are reported to have AIDS.<sup>60</sup> Between two and six million adults are believed to suffer from emotional distress at any point in time. Anxiety states and depressive disorders account for the great majority of officially recognised types of mental illness. Around 2.3 million people suffer from depression and up to 2.8 million suffer from anxiety.<sup>61</sup> Liberty has detailed a variety of human rights abuses suffered by people with learning disabilities and mental health problems in a separate report.<sup>62</sup>

The SCPR survey estimated that 22 per cent of adults of working age had a health problem or disability.<sup>63</sup> These surveys are consistent with earlier studies which suggest that between 10 and 5 per cent of the general population is disabled.<sup>64</sup>

## Defining disability

The size of the disabled population in Britain obviously depends on the definition of disability which is used.<sup>65</sup>

Much of the hostility to anti -discrimination legislation is motivated by an individualistic and medical view of disability. <sup>66</sup> This view seeks to explain the disadvantages experienced by disabled people as simple consequences of their individual physical and functional limitations. According to this definition, discrimination is rare and, where it does occur, can be justified. As one commentator put it:

The only real remedy for a disability is a complete cure. Otherwise the best that we can do is to push many small advantages the disabled person's way, in the hope that their cumulative effect will make up for the original big disadvantage. To call that 'equality', however, is to misuse the language. In place of legs we offer wheels. No number of wheels will ever equal one single leg so how do we know when to stop? Who is to say at what point the different lifestyles of able-bodied and disabled persons are brought to a level of equivalence? How far do we have to go to avoid being accused of 'discrimination' against the disabled? ...The truth is that the disabled [sic] cannot manage without the sympathy, indeed the protection, of the rest of society, and they have been badly misled if they think otherwise.<sup>67</sup>

In contrast, disabled people argue that they face discrimination which cannot be justified<sup>68</sup> and that the problems they face are overwhelmingly socially created. They define disability in a different way:

the term disability itself represents a complex system of social restrictions imposed on people with impairments by a highly discriminatory society. To be a disabled person in modern Britain means to be discriminated against. <sup>69</sup>

Many people who have physical impairments do not define themselves as disabled, and are not regarded as such by society, because their impairments do not lead to social exclusion. Some impairments -such as short sightedness -can be easily corrected, while others -such as colour blindness -do not prevent people from participating in most areas of society on generally equal terms. All people have different physical and mental capacities which make them more or less suited to

achieving different tasks or playing different roles in life, but such differences need not lead to discrimination. All people in all societies are dependent on others and this inter-dependence, of itself, does not prevent each person realising their full potential as an individual and, in doing so, making a contribution to the whole of society. Disability by definition, therefore, is not just a functional limitation but arises from the discrimination that disabled people face.

The way that society is constructed - both the built physical environment and the dominant attitudes and expectations of its population can lead to restrictions against certain groups which deny them equal opportunities to participate in all areas of life. This occurs either through conscious discrimination or because society has not adapted to those groups' needs. The different physical and mental capacities of some groups does not necessarily lead to social exclusion. For example, people who are colour blind are not excluded because, on the whole, society is not ordered and regulated by colour recognition. Also, while people who are left handed still face problems because most objects in society were designed for use by people who are right handed, social attitudes to left handed people have changed and they are no longer at risk of being burnt to death as witches -as they were during the 17th century -or forced to try and write with their right hands - which was a common practice until recent decades.

It follows, then, that there are two inter related elements to what is termed disability:

- The physical, mental or sensory impairment of an individual.
- The social environment, artificial barriers and attitudes which prevent the individual from playing a full part in the life of the community.

Following from this, three types of discrimination against disabled people have been identified:<sup>71</sup>

- Direct discrimination, which means treating people less favourably than others because of their disability.
- Indirect discrimination, which means imposing a requirement or condition on a job, facility or service which makes it harder for disabled people to gain access to it.

- Unequal burdens, which means failing to take reasonable steps to remove barriers in the social environment that prevent disabled people participating equally.

The first two forms of discrimination are the same as those currently outlawed in the areas of race <sup>72</sup> and sex <sup>73</sup> and could be dealt with by similar means. For example, legislation covering a wide range of activities, including employment and training, housing, education and the provision of goods and services, as well as access to the built environment, transport and communications systems could be introduced. As with race and sex discrimination, the different aspects could be enforced using different mechanisms, industrial tribunals in the case of employment discrimination, and county courts for other forms of discrimination.

The concept of "unequal burdens" widens the definition of discrimination in relation to disabled people. This type of discrimination exists when an artificial barrier, which could be deemed by reasonable adaptation, prevents a disabled person from benefiting from an opportunity enjoyed by a non-disabled person. Enforcing measures to counter this form of discrimination may require the establishment of a new form of tribunal, although the procedures would be similar to those used in disputes about race and sex discrimination. <sup>74</sup>

In the case of direct or indirect discrimination in employer or service provider is committing a civil offence if they treat someone unfairly because they have an impairment. In the case of unequal burdens discrimination, the employer or service provider is committing an offence if they fail to adapt the environment to take account of an impaired person's incapacity when it would be unreasonable for them to do so.

The first two forms of discrimination are defended by the argument that such discrimination is fair because the impairment in question genuinely prevents the person from performing the work or receiving the service they are excluded from. Discrimination of the third type, however, is defended by the argument that the adjustments necessary to enable participation would require unreasonable expense, disruption and change bearing in mind the size of the organisation, its financial viability and the level of hardship such adjustments would cause. It would be up to the tribunal, court or other adjudicating body to decide each case on the basis of the evidence presented by each side.

The government has opposed legislation aimed at outlawing these forms of discrimination primarily because it argues that the costs of converting the built

environment would be prohibited. However, this argument is not convincing. Proponents of anti-discrimination law accept that it would need to be phased in over a long period and even those who argue for education and persuasion rather than enforceable laws as the means to change accept that these costs will have to be met eventually. The financial costs and benefits of such legislation will be dealt with in more detail later in this report.

The other main argument against new legislation is that discrimination- is not pervasive and, where it does occur, can be justified. In 1990 a Department of Employment consultative document stated that:

a major difficulty is that disability, unlike race or sex, can be relevant to job performance and what to some might seem like discrimination may in reality be recruitment based on legitimate preferences and likely performance. <sup>75</sup>

However, there are numerous examples of direct and indirect discrimination against disabled people which are not justifiable but against which there is currently no legal redress. For example, in 1988 a worker in the advertising department at the Daily Telegraph newspaper was sacked because he had a mild form of controlled epilepsy <sup>76</sup> and in 1990 the Court of Appeal ruled that a property development company could lawfully exclude certain occupiers from its new home. <sup>77</sup> Other examples include:

- a holiday camp which refused a week's booking from a group with cerebral palsy<sup>78</sup>
- a coach hire company which refused to carry a person in a wheelchair<sup>79</sup>
- a property owner who refused to sell to or allow occupation of land by people with a history of mental health problems <sup>80</sup>
- a landlord who banned a disabled skittles team from a public house because he believed some of its members to be "mentally handicapped"<sup>81</sup>
- a woman who, having been accepted onto a postgraduate course, had the offer withdrawn because doctor's report revealed that she had a history of depression. The depression was under control and, in the doctor's opinion, the woman was perfectly fit to allow the vocational course and pursue a career <sup>82</sup>
- an oil company which refused to employ people who are HIV positive<sup>83</sup>
- a leaseholder who refused to allow a property to be converted for use as a centre for people with learning disabilities <sup>84</sup>

- a blind doctor who was prevented from taking her guide dog into Buckingham Palace where she had been invited to receive an award from the Queen <sup>85</sup>
- a student with a hearing disability who, despite holding three grade A's at A level, was denied an interview for a place at University <sup>86</sup>
- an employer who refused to hire a qualified blind telesales person because its office was on the first floor and the employer thought that blind people could not walk up stairs. <sup>87</sup>

These are just some instances of the widespread discrimination that disabled people face in many areas of British society.



## **Section five: disabled people in public life**

Disabled people are under-represented in all forms of public life. This under-representation is partly due to direct and indirect discrimination and partly due to the physical exclusion of disabled people from many public places. Disabled people's restricted access to decision-making power in society has increased their political marginalisation and compounded many of the problems that they face.

### **Access to political life**

Disabled people face a number of barriers to participating fully in public life. Unreasonable restrictions are placed in the way of disabled people who wish to take part in public affairs, and the way British elections are conducted denies many disabled people the right to vote. The following examples highlight breaches of Article 25 of the ICCPR by the British government.

In separate reports Liberty has highlighted some of the problems that disabled people and people with mental health problems face when attempting to exercise their right to vote.<sup>88</sup> The law prevents some disabled people from registering to vote and places obstacles in the way of others who attempt to do so.<sup>89</sup> The physical inaccessibility of many polling stations, the difficulties in obtaining postal or proxy votes and a less than equal access to political information denies disabled people the right to make informed political choices and to enjoy political influence on equal terms with others.<sup>90</sup>

Some long-term hospital patients are excluded from the electoral register and, in practice, the vast majority of people in hospital with mental health problems or learning disabilities remain disenfranchised. A study by the mental health charity, MIND, found that in 1988 only 329 such hospital residents were registered out of a total of 4,349.<sup>91</sup> It also found widespread variations between institutions and concluded that electoral registration levels appeared to depend on the attitudes of the staff.<sup>92</sup>

Prior to the Representation of the People Act 1983, people living in institutions, particularly those with mental health problems or learning disabilities, were defined as patients rather than residents and were not entitled to vote. The 1983 Representation of the People Act gave hospital residents the right to vote but only under certain narrowly defined conditions which do not apply to similarly impaired people living in the community or to any other group in society.<sup>93</sup> Residents in

hospitals for people with mental health problems or learning disabilities "may" be entitled to vote but only if they have completed a "Patient's Declaration" form by 10 October each year. They must complete the form themselves - unless they have a physical or sensory impairment which prevents them from doing so – and in the presence of a hospital staff member who is required to counter sign it. No other group in society is forced to prove that they are capable of voting. <sup>94</sup>

Hospitals are not defined as residences so hospital patients have to give an outside address in order to register to vote. This may cause problems for long stay residents who actually live in the hospital. It also deprives them of the ability to influence events in the constituency where the hospital is located.

Many other disabled people living in staffed or sheltered accommodation lose their right to vote due to ignorance and mistakes by staff. Studies have shown wide regional variations and high levels of ignorance amongst carers. Disabled people living at home often are not registered by the head of the household because the government has not given sufficient priority to public education about disabled people's right to vote. <sup>95</sup>

Disabled people who are registered still face "unequal burdens" when exercising their right to vote. There is a legal obligation on local authorities to ensure that polling stations are accessible but only "so far as it is reasonable and practical to do so."<sup>96</sup> In the 1992 general election -only 12 per cent of polling stations were fully accessible to disabled people, preventing many from voting.<sup>97</sup> Many more disabled people were unable to even reach the polling stations because of the lack of accessible public transport. Such physical difficulties persuade many disabled people not to bother registering.<sup>98</sup> This perpetuates the process of political marginalisation as it weakens the electoral influence disabled people have, makes the main political parties less likely to promote issues of concern to disabled people and increases the relevance of mainstream politics to people with disabilities.

Some presiding officers are not aware that the law allows them to give assistance to disabled people who are casting their vote.<sup>99</sup> The officer is not under any duty to give any other assistance to a disabled person, such as helping them to enter or leave the polling station, and the only people who are allowed assistance from someone other than the presiding officer are people with visual impairments, who may be helped by a friend or relative who meets strictly defined criteria.<sup>100</sup> In addition, because ballot forms are not available in braille or on tape, blind people are effectively denied the right to a secret ballot. <sup>101</sup> Disabled people may obtain

postal or proxy votes if they have a doctors certificate but. the procedure is complex and many find it either daunting or unnecessarily intrusive.<sup>102</sup>

Disabled people who wish to play a more active role in British politics face additional problems. The Houses of Parliament are very inaccessible to many disabled people while the public gallery of the House of Commons provides only four places for people in wheelchairs.<sup>103</sup> Although the proceedings of Parliament have been televised since 1989, these broadcasts are inaccessible to deaf people because they are not subtitled. Outside Parliament, many political meetings are held in inaccessible venues and, although the three main political parties now use signers at their annual party conferences, much of their election literature is published in forms which are inaccessible to disabled people. <sup>104</sup>

By contrast, by November 1993, three years after the passage of the Americans With Disabilities Act in the United States, 94 per cent of polling booths in New York were accessible to disabled people for the Mayoral elections, and every state in the USA now provides relay systems to make television accessible to deaf people. <sup>105</sup>

## **Disabled people and the media**

Article 19 of the ICCPR guarantees people the right to impart information and ideas of all kinds and the freedom to seek and receive ideas of all kinds and in all media.<sup>106</sup> This right carries with it "special responsibilities" and may be restricted to protect the rights and freedoms of others.<sup>107</sup>

The denial of disabled people's right to freedom of expression raises complex issues. There are no legal restrictions on disabled people exercising their right to freedom of expression but their under-representation in the media, the prevalence of inaccessible forms of media and lack of control about the ways in which they are portrayed by the media mean that disabled people cannot enjoy this right on equal terms with the non-disabled population.<sup>108</sup> Disabled, people have identified negative imagery in the media as a major contributory cause of the discriminatory attitudes they face in the rest of society. The government's emphasis on "education and persuasion" to help change public attitudes also acknowledges the important role that the media can play in perpetuating or reducing the discrimination that disabled people face.

Government interference with, or regulation of, the media raises serious concerns from a freedom of expression standpoint. However, the "special responsibility"

with which this right must be exercised does provide potential justification for a degree of regulation in order to protect the rights and freedoms of others. Liberty will be addressing the issue of freedom of expression in more detail in a forthcoming report. <sup>109</sup>

Disabled people do not have the right to receive information in an accessible format. In 1990 only 14.5 per cent of all television programmes carried subtitles - although this is increasing. Television sets equipped to take subtitled programmes are more expensive to buy <sup>110</sup> and newspapers and magazines are rarely, if ever, published in a form accessible to people with visual impairments. Only one national newspaper, The Guardian, is available in an accessible format. on the same day as it is published. While some voluntary organisations produce taped, weekly summaries of some newspapers, visually impaired users are denied access to information of the same quality and at the same time as the non-disabled population. <sup>111</sup>

Disabled people are significantly under-represented in the broadcast media where negative images of disabled people are also widespread. <sup>112</sup> Films, plays and literature frequently portray disabled people as objects to be pitied or feared. Newspapers similarly patronise and misrepresent the experiences of disabled people. Although in 1989 the Broadcasting Standards Council stated in its Code of Practice that programmes should provide "a fair reflection of the parts played in the everyday life of the nation by disabled people" and in 1990 the editors of the main national newspapers agreed a similar voluntary code of practice, <sup>113</sup> such announcements are widely regarded as "cosmetic" by many disabled activists. <sup>114</sup>

The media also perpetuate a negative, stereotypical and sensationalist image of "mental illness" which makes acceptance by the wider community more difficult.<sup>115</sup> An analysis by the Broadcasting Research Unit in 1988 showed that disabled people rarely figure in news and current affairs programmes except as the subjects of medical cures or treatment or as examples of the special achievements of disabled people who overcome their impairments.<sup>116</sup> It found very few images of disabled people simply participating in everyday society. In addition, the selection criteria of programmes with participating members of the public appeared to be discriminatory -for example, not one of the game shows examined included a disabled person. <sup>117</sup> The same research showed that only 1.4 per cent of the speaking characters in fictional programmes were disabled (disabled people comprise about 10-15 per cent of the general population) and of the character shown, 65 per cent were male, 95 per cent were white and 50 per cent were aged

between 25 and 40 -which gives a misleading portrayal of the disabled population.  
118

Disabled people are more likely to be included in feature films than drama programmes but the portrayals of them are overwhelmingly negative. Of the 134 films analysed, 72 contained disabled characters. Fifty-three of these were major parts and 25 of them parts in which the circumstances of the disability was an important issue. however, in 13 of these the portrayal was judged to be sentimental, while in only eight was the issue of prejudice and discrimination raised.<sup>119</sup> The use of negative stereotypes was frequent and disabled people are often found to be portrayed as criminals, subhuman or pathetic. The study showed that disabled people were included "to enhance the atmosphere of a film when it needs to be one of deprivation, mystery or menace" because they are seen as "not ordinary people".<sup>120</sup>

In contrast to Britain, American television programmes are far more likely to provide positive and realistic portrayals of disabled people. In dramatic fiction disabled characters are more often portrayed as "sociable, extrovert, moral and non-aggressive and less likely to be dependent, sad, moody or difficult to get on with."<sup>121</sup> On American programmes disabled people are frequently shown having an emotional relationship and are far less likely to be portrayed as people incapable of sexual relationships or sexual activity.<sup>122</sup>

## The politics of pity

Many disabled activists argue that their under-representation in public life, the denial of their right to equal political participation and the restrictions to their freedom of expression are reinforced by some charities which, though seeking to work on their behalf, do so in ways that promote negative images of disabled people.<sup>123</sup> In 1990 a group of disabled activists formed the Campaign to Stop Patronage. This group demonstrated against the Telethon, an annual television fund-raising event which appeals to the public for donations to charities for disabled people and other disadvantaged groups. The images used by Telethon and those in the advertisements of some charities, are seen by many activists to promote an image of disabled people which reinforces the prejudices of people in society. Disabled people are often portrayed as "pitiable and pathetic" and such advertising has been described as "the cynical exploitation of stereotypes".<sup>124</sup>

Three types of advertising have been identified: the philanthropic, which portray the disabled as people to be pitied; the courageous, which portray the disabled as

people overcoming their impairments; and the "positive", in which the "normal" or "able-bodied" abilities of individual disabled people are celebrated.<sup>125</sup> The more positive imagery is viewed as an improvement on the philanthropic approach and is one which was largely forced on the disability charities by strong lobbying against previous advertising campaigns.

However, there is still concern that such imagery does not accurately reflect the disabled community as a whole, ignoring the racial and gender divisions within it and the real differences between disabled people and the rest of the population.<sup>126</sup> The use of such images has also been criticised for obscuring the need for society to change. By promoting a concept of "normality", the real differences between disabled and non-disabled people are minimised. BCODP has argued that "there is an inherent contradiction in the assertion that disabled people are basically 'normal' but at the same time have to get others, notably non-disabled people, to beg on their behalf for the basic necessities of life."<sup>127</sup>

The BCODP has drawn up a code of ethics for the advertising industry and some disabled people have produced their own adverts which use positive images and focus on the need for equal rights.<sup>128</sup> Disabled people are best able to speak for themselves, represent themselves and decide the ways in which they should be portrayed. These rights, which many in the rest of society take for granted, and which are underwritten in the ICCPR, are being denied to disabled people in Britain in an unjustifiable and discriminatory fashion.

## **Section six: discrimination against disabled people in employment**

Nineteen ninety-four marks the 50th anniversary of the Disabled Persons (Employment) Act, which the government's consultation paper proposes to repeal. Under this legislation three per cent of the workforce of all employers with 20 or more full-time employees must be registered disabled people. Those who fail to comply, or to keep records of their quota, are liable to a fine or imprisonment. Although employers may apply for exemption certificates to the Department of Employment, stating why they cannot meet their quota, these are issued on a discretionary basis only.

There are currently around 370,000 people registered under the Act and issued with a green card, but this is only a tiny fraction of the number of adult disabled people in the UK. <sup>129</sup> According to the SCPR survey, 65 per cent of unregistered disabled people saw no advantage in registering, while 21 per cent actually believed that registering would make it more difficult for them to obtain work. <sup>130</sup>

This cynicism is justified. The legislation requiring firms to employ a minimum quota of disabled people is widely ignored and rarely enforced. There have been only 10 attempts to prosecute employers for failing to meet their quota over the last 50 years, resulting in only seven fines, with an average value of £62.00,<sup>131</sup> the latest of which was in 1975. The maximum fine of £100 was set in 1944 and has never been increased and while the number of firms abiding by the quota rose until the mid 1960s (53.2 per cent in 1965), it has fallen steadily ever since (to 26.8 per cent in 1986). Since 1972 the number of employers given exemption certificates has exceeded the number complying with the scheme,<sup>132</sup> while an estimated 17.2 per cent of those who did not meet their quota in 1986 did not apply for exemption certificates -an indication of the low likelihood of their prosecution <sup>133</sup> and of the ineffectiveness of the quota system.

A succession of government reports have acknowledged that the system is largely being ignored but all of these have rejected proposals for tighter enforcement of the laws in favour of policies of "education" and "persuasion".<sup>134</sup> The number of staff employed to enforce the legislation was cut drastically during the 1980s while a leaked Department of Employment memorandum from 1991, obtained by BCODP, stated that "work with disabled people is given little status and even less priority by the Employment Service." <sup>135</sup>

Although the 1944 Act is not binding on government departments, they have agreed to accept the same responsibilities as other employers but are not complying with the legislation themselves. In March 1994- the Department of Health admitted that it employed 68 registered disabled people, only 1.4 per cent of the total workforce and less than half the legal quota.<sup>136</sup> Within the civil service as a whole there are 1.5 per cent registered disabled employees <sup>137</sup> but only 0.3 per cent work in the Home Office and none at all in the Prime Minister's office. <sup>138</sup> Only 0.7 per cent of employees in the private sector are registered disabled. <sup>139</sup>

Changes to the way in which the official unemployment statistics were recorded during the 1980s, especially an increasingly strict application of the "actively seeking work" rule, significantly reduced the proportion of those people out of work who are registered as unemployed. This means it is difficult to make direct comparisons between the numbers of unemployed disabled and non-disabled people. However, it is estimated that disabled people are about three times more likely to be unemployed than non-disabled <sup>140</sup> and are also unemployed for longer periods. Those in employment are more likely to have lower paid, lower status and less secure jobs which they are more likely to leave before the official retirement age.<sup>141</sup> The SCPR estimated in 1990 that 3.8 per cent of working-age adults (16-55 years for men, 16-60 years for women) who were in work or seeking work were disabled (1,272,000 people). Twenty two per cent of these were unemployed and "actively seeking work" (285,000 people). <sup>142</sup>

These figures exclude significant numbers of disabled people who want to work but can not be defined as "actively seeking work". According to the arcs, less than a third of disabled people of working age in Britain are actually in employment <sup>143</sup> and although 34 per cent of those interviewed said that they were permanently unable to work, some of these might be able to do part-time or sheltered work if it was available.<sup>144</sup> Of those who were available for work, over half had stopped looking for it because of the difficulties they experienced <sup>145</sup> and, of those who had stopped looking and therefore were no longer classified as unemployed, 86 per cent of the men and 65 per cent of the women had previously taken steps to find work. <sup>146</sup> The OPCS also found that 31 per cent of disabled men and 16 per cent of disabled women "retired" early - a significantly higher proportion than in the general population. <sup>147</sup>

Disabled people in work are usually employed in poorly paid, low skilled, low status jobs which are unrewarding and undemanding. For example, a considerably greater proportion of disabled people are employed in clerical and administrative



work or in semi -skilled and personal service work than is the case for the working population as a whole,<sup>148</sup> whilst a much lower proportion are employed in professional or managerial positions.<sup>149</sup> In 1990 the government revealed that no disabled people were employed in the top seven grades of the civil service. <sup>150</sup>

The SCPR study found that disabled men in full time employment earn a quarter less per week on average than their non-disabled equivalents .<sup>151</sup> Precise information about disabled women's earnings is not available but the OPCS survey found that they earned about a third less than male disabled people,<sup>152</sup> a smaller proportion than that of female to male earnings in the population as a whole. <sup>153</sup> The difference between the hourly earnings of disabled and non-disabled males is of a similar scale and, while the difference is narrower between disabled and non-disabled women, this only reflects the general disadvantage which women face in the labour market. <sup>154</sup>

## **Direct discrimination in employment**

Those who argue that the under-representation of disabled people in employment is not caused by discrimination have been directly contradicted by two separate studies conducted by the Spastics Society into hiring practices in the private sector. <sup>155</sup>

The two surveys used techniques similar to those which measure racial discrimination. Two fictitious applications were sent out in response to publicly advertised jobs. These differed only in that one purported to be from a disabled person. The studies revealed virtually identical evidence - that the non-disabled applicant was one and a half times more likely to receive a positive reply, while the disabled candidate was six times more likely to receive a negative response. <sup>156</sup>

A third of all people who become disabled whilst in employment and subsequently leave their jobs for health reasons are either sacked or pressurised into leaving by their employers. <sup>157</sup> Whilst those with a greater length of service are more likely to retain their jobs, this only indicates that the subjective attitude of the employer has some influence on the decision to leave, and that this is not governed merely by the nature of the impairment. Disabled employees working for large firms are more likely to retain their jobs than those working for small firms because larger firms are more able to make reasonable adaptations to the built environment -again showing that the impairment itself is not the decisive factor .<sup>158</sup>

A government study found that, while 75 per cent of a large representative sample of public and private sector employers claimed they would not discriminate against disabled people, 13 per cent said they would only employ disabled people for certain types of work and six per cent said that they would not employ disabled people "under any circumstances".<sup>159</sup> However, even the good intentions displayed by 75 per cent of the employers in this study do not always translate into practice and the numbers who openly admitted to discrimination may well be an under-estimation.

The survey also found that 68 per cent of employers felt that the jobs in their firms would be unsuitable for disabled people, 52 per cent saying the premises would be unsuitable and 14 per cent citing transport and access problems. A total of 91 per cent of employers said that they would have problems employing a disabled person.<sup>160</sup> Despite the government's code of practice - which calls on employers to encourage applications from disabled people when advertising jobs - only four per cent of the sample said that they would positively encourage disabled people to apply for jobs.<sup>161</sup> The fact that 52 per cent of employers considered climbing stairs to be vital for office work<sup>162</sup> illustrates the reports conclusion that many of the "so-called vital abilities (which disabled people are presumed to require) would not stand objective analysis."<sup>163</sup>

The government's continued and exclusive reliance on "education and persuasion" to overcome the disadvantages faced by disabled people is difficult to understand when its own research so conclusively demonstrates that it has been ineffective in eradicating prejudice and discrimination in employment. Discrimination is prohibited by Article 26 of the ICCPR which calls on states to ensure that all people have equal and effective protection against discrimination on any grounds. Governments are encouraged to take affirmative action to overcome the effects of discrimination and there are no circumstances under which they may derogate from these anti-discrimination obligations. The British government is comprehensively breaching Article 26 by not taking steps to eliminate discriminatory attitudes and practices against disabled people.

## **Section seven: discrimination against disabled people in the welfare and education systems**

### **Benefits**

Discrimination and the social environment forces disabled people into dependency on benefits and support services. The ICCPR does not guarantee rights to education, welfare and health care -although these are protected within the International Covenant on Social and Economic Rights. However, the ICCPR does prohibit direct and indirect discrimination in the allocation of goods and services<sup>164</sup> and also protects against breaches of other rights contained within the Covenant.<sup>165</sup> Disabled people suffer substantial discrimination within the welfare and education systems and have other rights -such as their right to privacy - infringed in a discriminatory and unjustifiable way.

According the OPCS survey, 75 per cent of disabled adults are reliant on state benefits as their main income.<sup>166</sup> Because disabled people are more likely to be unemployed than their non-disabled counterparts they are less likely to be eligible to entitlements from National Insurance contributions. This makes them more dependent on means-tested benefits. Not only are benefit levels low -18 per cent of average earnings in 1992<sup>167</sup> -but disabled people who claim them face intrusive questioning. This often interferes with their privacy in an unreasonable fashion and breaches Article 17 of the ICCPR which offers protection against arbitrary interference with privacy from the state and other bodies even if it is provided for by law.<sup>168</sup>

Most disabled people seeking to claim welfare benefits are subjected to at least two tests -an economic means test and a functional or medical test. Other benefits depend on the applicant filling in a lengthy self assessment form. In order to obtain Attendance Allowance or Disabled Living Allowance a disabled person must produce medical evidence from a doctor, a self assessment form and a statement from someone the claimant knows. The form asks the claimant a number of intimate questions, such as:

- roughly how many days/nights a week do you need help using the toilet, coping with incontinence, using a colostomy bag, changing nappies, pads or incontinence aids?
- roughly how long do you need help when in the bathroom?

- roughly how many days a week do you need someone to keep an eye on you?
- please tick why you need someone to keep an eye on you: you could hurt yourself, you could hurt someone else, you get confused, you could wander off. ...<sup>169</sup>

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Benefit entitlement tends to be based on a medical model of disability in which the claimant presents a diagnosis and passes a test of functional impairment which focuses on what they cannot do. People with learning disabilities, sight problems, or anyone with literacy problems, will have to discuss intimate matters with someone else in order to complete the claim form. Disability activists have complained that this is demeaning and stigmatizing -that it ignores the social context in which the individual is located and infers that the impairment is the individual's fault. <sup>170</sup> BCODP have commented that:

To receive financial support, applicants are encouraged to emphasize impairments and functional limitations as opposed to personal autonomy and skills. Indeed to secure the maximum economic advantage from the benefit system disabled people are forced to present themselves in the worst possible light. This has become even more important in recent years because of the shift away from statutory entitlements to discretionary grants. <sup>171</sup>

The benefit system is also complicated and confusing. Each benefit has a different set of eligibility criteria. For example, a person's age at the onset of the impairment, the cause of the impairment, its severity, an individual's work record, their national insurance contributions and their country of residence all have an important influence on determining benefit levels. This can both discourage people from taking up their entitlements and lead to anomalies and discrimination. The result is that two people with identical impairments can receive benefits differing in value by almost £250 per week.<sup>172</sup>

In addition, disabled people who are women and those from ethnic minorities are more likely to receive lower levels of benefit because of indirect discrimination, <sup>173</sup> while the system directly discriminates against people over the age of 65 who become ineligible for some benefits, such as the Disabled Living Allowance, because they are over the age of retirement. <sup>174</sup>

## Support services

Lack of adequate support and assistance prevents large numbers of disabled people from participating fully in the mainstream economic and social life of society. The resulting restriction to full participation underpins the denial of many other rights that disabled people are entitled to.

About 60 per cent of all disabled adults need some form of assistance <sup>175</sup> and at present there is no national, comprehensive and flexible support system for disabled people. Around four million people, mainly women, provide informal assistance of one kind or another to disabled relatives, friends or neighbours.<sup>176</sup> The majority of married disabled adults are without work and forced to be dependent on state benefits <sup>177</sup> and, because the social security system connects disability benefits with carers' benefits -so that receipt of one can hinge on the receipt of the other -this can create economic hardship, forcing many carers to contribute to the costs that arise from the disabled person's condition.

The National Health Service and Community Care Act 1990 aimed to provide a system of service providers so that long stay hospital patients could live in their own homes. Home-based provision was to be developed and expanded with a wide range of services provided both by the local authorities and private agencies. However, lack of any additional funding has not only fragmented services but left no clear national guidelines for provision <sup>178</sup> so that for many disabled people this Act has meant that institutionalisation has been replaced by virtual imprisonment in their own homes.

Disabled people who receive service help often experience difficulty organising their daily lives because of a lack of co-ordination between the voluntary and statutory service providers and because the services are geared to the providers' timetables. <sup>179</sup> They also have little or no control over who enters their home, or what professional helpers do once they are inside.<sup>180</sup> For example, in cases where home help is provided by the local authority, the worker can only perform those tasks approved by the local authority and cannot work to the disabled person's instructions. Regard, an organisation of disabled lesbians and gay men, has received numerous complaints about homophobic carers. <sup>181</sup>

Insufficient provision of community care support is also putting at risk patients discharged from mental health units. Under-resourcing of keyworkers and shortage of hospital beds were blamed for the deaths of two patients in Park House unit, North Manchester Hospital - one fell from a tower block and the other was found

hanging in a toilet in the hospital. A former patient of the same hospital died in a fire - he had previously told relatives that he was not getting the support he needed under care in the community. <sup>182</sup>

The Children Act 1989 provided a new legal framework for the provision of services to disabled children and gave a clear, positive and separate duty to local authorities to provide services to children in their area. However, the report of a national inspection of services, published by the Department of Health in 1994, showed that none of the authorities surveyed had met any of the standards required in full - only half had produced any childcare policies specifically for disabled children and none had circulated these to the relevant staff or members of the community.<sup>183</sup> Disabled children are particularly vulnerable to ill-treatment - such as sexual abuse - and are currently given insufficient protection against such abuse.<sup>184</sup> They are also more likely to be put in residential care and to be dependent on more than one carer.

## **Education**

Disabled people receive a substantially worse education than their non-disabled counterparts. They are likely to leave school with fewer qualifications and face numerous discriminatory barriers to entering higher education.<sup>185</sup>

The mainstream education system is largely inaccessible to disabled people. A survey by the Spastics Society and the National Union of Teachers, published in April 1993, found that only 18 per cent of secondary schools in England and Wales considered their teaching space to be at least three quarters accessible.<sup>186</sup> While 46 per cent of primary schools considered themselves to be largely accessible, the survey found that many school facilities, such as playgrounds, libraries, specialist subject areas and school toilets were inaccessible at both primary and secondary level.<sup>187</sup>

Disabled people are often given segregated education, which is known to be extremely socially divisive.<sup>188</sup> BCODP have commented that:

disabled school leavers are socially immature and isolated. This isolation results in passive acceptance of social discrimination, lack of skills in facing the tasks of adulthood and ignorance about the main social issues of our time.<sup>189</sup>

According to government estimates there are 360,000 disabled children under the age of 16 in Britain. Over a third of these live in private households. Of those in residential homes two thirds are educated in segregated environments.<sup>190</sup> Special schools appear to offer a lower standard of education than mainstream schools, although the official information about this is contradictory.<sup>191</sup> The government inspectorate which enforces standards in special secondary schools is different to that which operates for mainstream schools and staff at special schools do not need to have the same level of qualifications.

It is widely accepted that the best way of preventing discrimination against disabled people in education is to ensure that mainstream facilities are accessible and that disabled people can, as far as possible, be integrated into them. The government is officially committed to encourage integrated education for disabled people, yet despite the Education Act 1981 which was supposed to help achieve this, segregation remains widespread.

In 1978 the Warnock Committee Report called for greater integration in education. However, between 1977 and 1989 the level of segregation fell by only one per cent<sup>192</sup> while some local education authorities have increased the number of children that they send to special schools by up to 25 per cent since the passage of the 1981 Act. Although this Act made it illegal to place children in special schools unless they have been assessed and given a formal statement of their "special education needs", official figures show that over half the children in special schools who have been assessed have no formal statement, while 14 per cent have not been assessed at all.<sup>193</sup> It is also claimed that disabled children are denied places at mainstream schools because it is cheaper to segregate them.<sup>194</sup>

Disabled students make up only 0.3 per cent of the entire student population in higher education.<sup>195</sup> Most higher educational institutions are very inaccessible, which massively restricts the choice available to potential students who are disabled. Direct discrimination in the selection process also appears to prevent qualified students obtaining places.<sup>196</sup>

## **Section eight: freedom of movement and association**

The protections provided by Articles 21 and 22 for freedom of assembly and freedom of association are primarily intended to protect people's right to take part in public affairs for political and other purposes. Article 12 of the ICCPR also explicitly guarantees a right to freedom of movement.

Although the British government does not directly deny disabled people the right to freedom of movement, freedom of assembly or freedom of association, it fails to ensure that they can enjoy these rights on equal terms with the non-disabled population. The nature of the built environment – including, in particular, the public transport system – and the lack of anti-discrimination protection which would force this to change, mean that disabled people are often prevented from entering buildings or using particular forms of transport.

This exclusion is a form of discrimination contrary to Article 26 of the ICCPR and by denying disabled people the ability to travel with the same ease and equality as the rest of the population, the British government is breaching other fundamental rights, such as the right to freedom of association and freedom of assembly. Such a pervasive denial of human rights to disabled people requires far-reaching legislative reform.

### **Restrictions to freedom of movement**

According to the Disabled Persons Transport Advisory Committee, between 10 and 12 per cent of the population are adversely affected by “unfriendly features of the transport environment”<sup>197</sup> The SCPR study revealed that 38 per cent of all disabled workers with jobs found the journey to work extremely tiring while another nine per cent reported that their journey to work cost them more than if they had been able-bodied.<sup>198</sup> Wheelchair users are virtually excluded from many transport services, which are supposed to be public but in practice are inaccessible, and people with mobility, sight or hearing impairments also find them difficult to use.

A survey by the Greater London Association for Disabled People in 1986 found that 450,000 people have difficulties using London Transport. Sixty-three per cent of those used buses only with "difficulty or discomfort", while 20 per cent could not use them at all.<sup>199</sup> By the summer of 1994 the government aims to have 70 low



floor buses - which are more accessible to wheelchair users -operating on five routes in London, but this is a small proportion of the total stock of more than 5,000.<sup>200</sup> Small buses, in common use since the deregulation of the bus services in 1987, are even more inaccessible. <sup>201</sup>

The problems of traveling on the underground are even worse. Wheelchair users were barred from using certain sections of the London Underground by four London Regional Transport (LRT) bye-laws until 1994 <sup>202</sup> and are advised to give LRT 24 hours notice of their time of travel and to travel off-peak with a non-disabled companion if they wish to use those sections on which they are permitted to travel. <sup>203</sup> Automatic ticket barriers, inaudible announcements and difficulties using escalators and lifts exacerbate the problems that disabled passengers face. Some more recently constructed urban railway systems - such as the Tyne and Wear Metro system and the London Docklands Light Railway -have overcome some of these difficulties, although problems still remain. <sup>204</sup> On the other hand, the comparatively recent Glasgow underground is completely inaccessible to wheelchair users. <sup>205</sup>

British Rail is gradually improving its train services to disabled people and 90 per cent of its new rolling stock have wide entry automatic doors, grab rails and some space for wheelchairs in its carriages. However, even the new trains have some accessibility problems and the improvements have been concentrated on Inter-City routes rather than on local services. One consumer survey pointed out that for most local and provincial train journeys "the guard's van looms large for people who have to travel in their wheelchair." <sup>206</sup>

Inaccessibility, lack of information and gross insensitivity by staff members make traveling by aeroplane an extremely frustrating experience for many disabled people. Travel agents have to fill in forms about the medical condition of disabled people who book flights and sometimes they have to prove that they are fit to travel. This frequently results in disabled people being asked highly personal or objectionable questions, such as "does he smell?"<sup>207</sup> Most aircraft are not accessible to disabled travelers and staff often appear unprepared for disabled passengers even when they have been given the relevant information in advance.

As a result journeys can often be particularly uncomfortable.<sup>208</sup> Also safety regulations specify that disabled people should not be seated in a position where they might hold up an emergency evacuation of the plane.<sup>209</sup>

Despite the inaccessibility of the public transport systems, households with a disabled person are only about half as likely as other households to possess a private car.<sup>210</sup> This is because cars suitable for disabled drivers are more expensive to buy and run and because insurance companies usually charge more expensive premiums to disabled people than to able-bodied drivers.<sup>211</sup> A small number of disabled people receive some assistance with the costs of motoring from government-sponsored charities, although there are problems with the type of assistance offered.<sup>212</sup>

## **Restrictions to freedom of association**

Disabled people are prevented from participating in many social and leisure activities and from entering many social and entertainment venues. The problems of physical access are compounded by prejudice and ignorance which frequently leads to disabled people being excluded from public houses, restaurants, museums, galleries, concert halls, cinemas, football grounds, racing grounds and other public places. BCODP has argued that the failure to make reasonable adaptations to venues to improve their accessibility partly results from the attitudes of managers, who appear to believe that the presence of disabled people at entertainment establishments will discourage non-disabled customers or spoil their enjoyment.<sup>213</sup>

Some venues ban wheelchair users on the grounds that they are a safety or fire risk, while others limit their numbers or require advance notification of their attendance. Even where the venue itself is accessible, often facilities such as toilets are not, and some, such as the National Theatre, refuse to allow disabled people to enter unaccompanied.<sup>214</sup> According to a disabled persons' guide to London, the attitudes of staff in venues vary wildly and, while there have been some improvements, discrimination remains widespread.<sup>215</sup>

A report by the Arts Council in 1985 found that disabled people faced widespread discrimination within the leisure industry and that such discrimination was perpetrated by a number of organisations which it funded.<sup>216</sup> The report made a number of specific recommendations for change resulting in the publication of a Consultation Paper and a Code of Practice. However, a review of progress three years later showed that little had changed<sup>217</sup> -the main recommendations had not been implemented and very few venues receiving Arts Council funding had made appreciable efforts to improve their accessibility. In the same year the Arts Council applied for an employment exemption certificate because it could not employ the legal minimum quota of disabled people, something it repeated in 1991.<sup>218</sup>

## Section nine: disabled people in residential care

Liberty has highlighted the appalling conditions suffered by people with mental health problems in hospitals and special hospitals. <sup>219</sup> There are no legal rules to limit or prevent intrusions into patients' privacy and patients have no right to prevent information about them being recorded without their knowledge or divulged without their consent.

According to the OPCS survey there are about 422,000 disabled people living in "communal establishments" or institutions, around 20 per cent of whom are below retirement age.<sup>220</sup> Standards of institutional care vary and for many, particularly elderly people, a well-kept, friendly residential institution is preferable to the isolation of home life with inadequate community support. However, inevitably life in an institution reduces independence, interferes with privacy and deprives people of rights and opportunities that they would otherwise take for granted "because the routine of their life will be predetermined, to a greater or lesser extent, by the needs of the professionals in charge of the institutions."<sup>221</sup>

This policy is even more disturbing because there is considerable official evidence that many institutions fall below the minimum standards required by international law. In 1992 an official report into Ashworth Special Hospital concluded that it "must be a prime candidate to be included as one of the establishments to be visited in the near future by the Committee for the Prevention of Torture and Inhuman and degrading Treatment."<sup>222</sup> Human rights abuses occur in many other institutions where practices breach the standards laid down in the ICCPR on privacy, respect for human dignity and protection against cruel, inhuman or degrading treatment.

In June 1994 a survey by the UK Central Council for Nursing, Midwifery and Health Visiting reported that complaints by elderly people against staff in nursing homes had doubled over a three-year period. <sup>223</sup> Cases highlighted in the report included:

- a frail and severely mentally ill woman forced to take pills by a male nurse who held his hands over her mouth so that she could not spit them out and who kicked her when she struggled. The same nurse also knelt on the chest of an elderly man and forced open his mouth to remove his dentures.
- the forced bathing of patients, including one who was terminally ill and six who were mentally confused and distressed.

The report revealed "wholly inadequate" systems of drug administration, ineffective management and "almost non-existent" training. <sup>224</sup>

In December 1993 the Mental Health Act Commission's fifth biennial report highlighted "a crisis in the care of the mentally ill, particularly in psychiatric wards in the inner cities."<sup>225</sup> It reported overcrowding, a shortage of beds, shortages of trained staff and inadequate management of wards, and found that patients were "prematurely discharged from hospital -often at a few hours notice to unsupervised accommodation -to make way for more acutely disturbed patients to be admitted."<sup>226</sup> It also condemned the use of police to control disturbed patients, referring to an occasion where 13 officers -some of them in riot gear -helped staff give an injection to a patient. <sup>227</sup>

A report by the Law Commission in 1993 revealed that many people in institutions suffered compulsory physical confinement by such instruments as straps on chairs, locks and bolts on doors and electronic tagging. <sup>228</sup> In December 1992 a woman with learning disabilities at one hospital died by "inhalation of vomit and suspension" after she had been left tied by the neck to a toilet cistern while staff went to lunch. <sup>229</sup>

None of these human rights abuses can be excused as the result of inadequate resources as the UN Human Rights Committee has specifically stated that "humane treatment and respect for the dignity of all persons deprived of their liberty is a basic standard of universal application which cannot depend entirely on material resources."<sup>230</sup>

## **Section ten: discrimination against disabled people in the criminal justice system**

In a separate report Liberty has highlighted defects in the criminal justice system which have led to the wrongful imprisonment of hundreds of innocent people.<sup>231</sup>

Suspects suffering from mental health problems are particularly vulnerable to pressure during police interrogations and sometimes this has led to false confessions. The Court of Appeal has ruled that confessions made by mentally vulnerable suspects, in the absence of a solicitor or appropriate adult, should not be automatically rejected as unreliable. <sup>232</sup> The guidelines for judges, advising on which confessions should be rejected and which cases withdrawn, are extremely narrow, and would not have prevented such notorious miscarriages of justice as the cases of Judith Ward <sup>233</sup> and Stefan Kiszko.<sup>234</sup>

Deaf people accused of crimes face additional problems which effectively deny them the right to a fair trial and protection against arbitrary detention. Deaf people have to pay for their own interpreters in domestic disputes and on average their legal costs are higher than those of non-deaf people because their cases last longer. <sup>235</sup> According to the Council for the Advancement of Communication with Deaf People there are only 92 fully qualified interpreters who perform all the interpreting duties for deaf people in the legal system. <sup>236</sup> The resulting difficulties in finding interpreters mean that deaf people are likely to spend longer in police custody and may be questioned either without having one present or using one who is not properly trained. Unqualified interpreters often make errors because they are usually not well versed in police jargon or not used to acting as strictly objective two-way channels. Small uncorrected errors can lead to major miscarriages of justice.

Deaf people are also particularly vulnerable to police misconduct. For example, in February 1994 a court heard how two deaf teenagers had been arrested on suspicion of breaking into a house after attempting to retrieve a ball from the garden. They were interrogated in the absence of a translator or solicitor and, it was claimed, the officers concocted a false confession.<sup>237</sup>

Such abuses of justice occur despite the code of practice in the Police and Criminal Evidence Act 1984 which says that a deaf or speech-handicapped person must not be interviewed without an interpreter unless he or she agrees in writing. This is reinforced by a European Court of Human Rights decision which stresses that the

authorities have responsibility for the interpreter's competence. However, suspects do not have a right to insist on a qualified interpreter and, even if they did, there is no recognised qualification of legal expertise for interpreters.

Perversely, in some circumstances the courts do recognise the potential dangers of subjective translations -for example, many judges bar deaf people from jury service if they need to be accompanied by an interpreter, even though there is no law or ruling which prevents jurors being accompanied by interpreters.<sup>238</sup> The declaration requiring people to attend jury service specifies that people may be discharged "if there is doubt as to your capacity to serve on a jury because of physical disability or insufficient understanding of English." Such decisions rest with the individual judges and this can lead to disabled people being excluded from juries purely through prejudice or ignorance. In January 1994 a woman who was due to become Britain's first deaf juror was banned from sitting despite the availability of equipment to enable her to read evidence from a computer screen.<sup>239</sup> There is also some evidence that qualified people have been unable to become magistrates or judges because of their disability and because of the lack of anti-discrimination legislation which would prevent this.<sup>240</sup>

The right of people who are arrested and facing criminal charges to be informed of their rights and the charges against them in a language that they understand is recognised as a fundamental part of the protection offered by Articles 9 and 14 of the ICCPR against arbitrary detentions or wrongful convictions. However, the British criminal justice system does not make these rights fully available to deaf people. Trial by a jury of peers is a corner stone of the British criminal justice system which can be denied to disabled people. This is a discriminatory breach of Article 14 of the ICCPR.

## **Section eleven: international comparisons**

A 1993 Department of Employment international comparative study identified two distinct approaches to employment policies for disabled people.<sup>241</sup> The first is an anti-discrimination or human rights approach, in which employment practices are included as part of an overall policy of law which recognises the rights of disabled people and seeks to eradicate discrimination against them. The second is a more compartmentalised approach in which specific government departments attempt to ensure that disabled people achieve full economic and social participation by making incremental changes to their policies. In the field of employment this second approach led to quota systems and financial incentives to encourage the employment of disabled people. It was noted that while the United States of America, Canada and Australia had adopted the first approach, most members of the European Union had practised the second. The report stated that policies were rapidly evolving in a number of countries as the issue of disabled peoples' rights gained prominence in the 1990s.<sup>242</sup>

### **European legislation**

In Britain it is argued that the lack of a written constitution, or of a "rights culture", makes the human rights approach inappropriate for this country. However, the British government is also opposed to a harmonisation of European social policy, and its record in promoting the rights of disabled people is significantly worse than that of many of its European partners in several areas.<sup>243</sup>

Discussions around the Social Chapter of the Maastricht Treaty led in 1991 to the publication of a draft directive on the physical and organisational barriers restricting disabled people's travel to and from work.<sup>244</sup> Although this directive is still in draft form, and there has been little progress on it since it reached the Council of Ministers in early 1992,<sup>245</sup> if it is eventually adopted it will be the first attempt by the European Union to tackle the discrimination of disabled people in legislation rather than by simply funding employment projects and relying on education and persuasion.<sup>246</sup>

Some European countries, such as France and Germany, have introduced anti-discrimination legislation as an "add-on" to their existing policies.<sup>247</sup> The Irish government began a consultation process to consider the viability of introducing comprehensive, anti-discrimination protection in 1993 and is expected to introduce legislation in the near future. Given that the Irish legal system is closely based on

Britain's, it is difficult to see why a similar solution could not be adopted in the UK.248



## **The Americans With Disabilities Act 1990**

The most comprehensive legal protection against discrimination of disabled people is the United States' Americans With Disability Act 1990 (ADA), which came into force in 1992. This Act specifically prohibits discrimination against disabled people - either directly, indirectly or on the basis of unequal burdens. It guarantees equality of opportunity for people with disabilities in four main areas:

- employment
- public services, including transport
- private sector services and accommodations
- telecommunications.

The Act, heralded as a "bill of rights for the disabled",<sup>249</sup> was consciously promoted as a civil rights measure rather than a welfare provision. The lobby for the Bill overcame all objections about costs and was so vigorous that it was said that no politician could vote against it and survive.<sup>250</sup>

It has been argued that the progress achieved by the American disabilities movement is partly due to the country's strong civil rights culture and partly due to the campaigning activities of many ex-service personnel who were disabled during the Vietnam war. They provided the initial impetus for the passage of the Rehabilitation Act 1973 which prohibits discrimination by the Federal government against "handicapped persons",<sup>251</sup> and continued to agitate for "rights not charity".<sup>252</sup> The movement that brought about ADA consciously modelled its tactics on the black civil rights campaign of the 1960s and the legislation it campaigned for drew on the Civil Rights Act of 1964. It also used the achievements of the Rehabilitation Act 1973 and the Education for All Handicapped Children Act 1974, which required disabled children to be placed in mainstream education institutions - where appropriate - and established individualised educational programmes for students with disabilities.

The ADA's definition of a disabled person includes anyone with a physical or intellectual impairment which substantially limits one or more major life activity, has a record of such an impairment or is regarded as having such an impairment. This definition is deliberately broad covering people with a history of mental illness, people who have recovered from cancer, people who are HIV positive and people with severe facial disfigurements. It also includes carers and people who

have a known association or relationship with someone who is disabled. In general, however, people with temporary conditions are not covered. <sup>253</sup>

The ADA prohibits direct discrimination against disabled people in employment and bans pre-employment medical examinations (although it allows tests once a job has been offered). It also prohibits indirect discriminatory practices such as tests or selection criteria that disadvantage disabled people and are not strictly necessary for the job. It further requires employers to make "reasonable accommodation" to enable disabled people to enter or remain in the workforce unless such accommodation would cause "undue hardship" to the employer or is not "readily achievable". The term "reasonable accommodation" was first used in the Rehabilitation Act 1973 and has an accepted legal definition. The terms "undue hardship" and "readily achievable" take account of the cost of the adaptation and the size and nature of the business. An employer is not required to make a particular accommodation until an applicant or employee with a particular disability needs it. The ADA regulations state that "the process of determining reasonable accommodation is an informal, interactive, problem-solving technique involving both the employer and the qualified individual with a disability." <sup>254</sup>.

Many of the accommodations require relatively simple adjustments to the work environment, such as changing working times, modifying machinery, making buildings accessible and providing readers and interpreters. The President's Committee on the Employment of People With Disabilities estimates that the vast majority of the accommodations necessary to make employment more accessible can be accomplished at minimal cost:

- 31 per cent can be accomplished at no cost
- 19 per cent cost between \$1 and \$5
- 19 per cent cost between \$50 and \$500
- 19 per cent cost between \$500 and \$1,000
- 11 per cent cost between \$1,000 and \$5,000
- 1 per cent cost over \$5,000 <sup>255</sup>

The ADA also protects the rights of all disabled people not to suffer from the discriminatory allocation of public services. Public entities must make reasonable modifications to rules, policies or practices, remove physical barriers and provide auxiliary aids so that disabled people are provided with the same range of facilities and services as those provided to the general population. Discrimination by the

state or local government is prohibited and such authorities are required to make all their facilities, services and communications accessible.

The particular importance of transport is recognised by the ADA, which requires that:

- All new state and public transport facilities must be accessible and all public transport systems must provide an equal level of service to disabled people.
- All new vehicles for more than 16 people must be accessible and all new coaches purchased after July 1996 (1997 for smaller companies) must be accessible.
- New buses and rail terminals must be accessible and renovations should take account of accessibility.
- Key stations should be made accessible within three years although this deadline can be extended to 20 years by the Secretary of State for Transportation.
- One carriage of every railway train should be accessible within five years.

Ultimately, all transportation systems are to be made fully accessible to disabled people.

The ADA also requires all telephone companies to install relay services for all persons with hearing impairments within three years and for these to be free of charge 24 hours a day. Any television public service announcement produced or funded in any way by any agency of federal government must be accessible to deaf people.

The evidence suggests that the ADA is gradually beginning to improve the lives of disabled people in America while avoiding most of the problems anticipated by its opponents. The ADA has not led to a flood of litigation and its legal provisions are proving to be relatively uncomplicated to enforce. While the Act is costing money, these costs are dispersed between government, companies and consumers and are offset by many increased business opportunities and savings to state welfare and social security budgets.

## Section thirteen: conclusion

This report highlights the nature and extent of institutional discrimination against disabled people in Britain. This discrimination prevents disabled people participating in society on equal terms with the non-disabled population and is in breach of fundamental human rights.

It is now widely accepted that disabled people do face discrimination, as was conceded by the Minister for Disabled people. Opposition to an anti-discrimination law now focuses on the estimated costs and practicalities of enforcing a new law, although there is still hostility to the civil rights approach.

There has been no serious official study or analysis of the potential costs and benefits of new civil rights legislation. The costings cited during the last parliamentary debate appear to rest on a wilful misunderstanding of the proposals. The government's Compliance Cost Assessment (CCA) alleged that the total cost of implementing the Civil Rights (Disabled Persons) Bill could be as high as £17 billion but this has been rejected as "wildly inflated" by the Rights Now Campaign, which says that it is an over-estimation by at least £12 billion. <sup>256</sup>

The CCA authors freely admit that the figure of £17 billion was derived from a series of "speculative guesstimates" on the basis of worst case projections. Rights Now have argued that the calculations are based on assumptions about the cost of replacing the entire non-domestic building stock immediately, scrapping all inaccessible buses and trains, paying disabled employees the same as their non-disabled counterparts regardless of their productivity and making expensive alterations to education institutions and the telecommunications system -all measures which the Bill does not in fact require. The Campaign complains that the figures "bear no relation to the possible costs to industry of the Civil Rights Bill, and one wonders if the authors could have taken the time to even read the Bill." <sup>257</sup>

The Rights Now Campaign also accuses the CCA of counting the costs of adapting public buildings and industrial premises twice and argues that the Bill allows for flexibility, a long timescale for implementation and for reasonable accommodations similar to those provided in the ADA, most of which can be accomplished at minimal cost. In addition, a number of buildings and facilities are already being designed to be accessible and new non-domestic buildings already have to be built in an accessible form. The Bill contains no significant requirements in this area.

The real likely costs of £5 billion must be balanced against the financial benefits that anti-discrimination legislation would bring by saving on welfare benefits, increasing tax yields and reducing the need for "special" segregated facilities. A Rights Now Campaign study has calculated that the costs of under-employing disabled people are as much as £5 billion a year, <sup>258</sup> while a number other studies have shown that making products and facilities accessible to disabled people is likely to increase markets and profitability. <sup>259</sup>

The experience of the ADA in the USA has shown that anti-discrimination legislation need not be financially prohibitive and will probably prove to be cost-effective over time. Indeed) the economic arguments are in favour of such legislation in countries like the UK which have an ageing population.

The other argument against such legislation is an ideological hostility to the concept of "human rights". One opponent has stated:

As there is no general concept of "civil rights" known to English law, the disabled would enjoy a novel and privileged status given to no-one else. Whatever else that is, it is not a blow against discrimination. ..the claim to civil rights ...aims to replace sympathy with law suits. ..The truth is that the disabled can not manage without the sympathy, indeed the protection of the rest of society and they have been dangerously misled if they think otherwise. <sup>260</sup>

Such an argument ignores rile fact that legislation has already been enacted prohibiting discrimination against women and members of ethnic minorities and that there is no constitutional reason why the scope of this anti-discrimination legislation could not be extended to cover disabled people. Given the extent of the discrimination perpetrated against disabled people in British society, and the government's failure to promote equality, it is a remarkable argument that this is justifiable because anti -discrimination law would amount to a "political revolution" .

Since the British government last reported to the UN Human Rights Committee there has been an increasing debate about how fundamental human rights in Britain can best be safeguarded. Both of the main opposition political parties now favour some form of Bill of Rights and a number of organisations, including Liberty, have produced draft Bills to stimulate further discussion. <sup>261</sup> Liberty has produced a separate report highlighting how the existing constitutional arrangements fail to

protect fundamental rights and freedoms.<sup>262</sup> The argument that preserving the structures, institutions and notions that exist at present is more important than ensuring that all people have the right to be treated with respect and allowed to realise their full creative potential[ is particularly perverse. Rather than justifying the British government's record, it is an indictment of the current lack of protection for the human rights of all people.

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6. Hansard, Civil Rights (Disabled Persons) Bill, 11 March 1994, col 520.
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28. *Ibid.*, para 2.
29. *Ibid.*, para 10.
30. *Ibid.*, para 12.
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32. *Ibid.*
33. UN, General Comment on Article 22, para 4.
34. UN, General Comment on Article 9, para 1
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