HOUSE OF LORDS

Select Committee on the Equality Act 2010 and Disability

Report of Session 2015–16

The Equality Act 2010: the impact on disabled people

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Select Committee on the Equality Act 2010 and Disability

The Select Committee on the Equality Act 2010 and Disability was appointed by the House of Lords on 11 June 2015 to consider the impact on people with disabilities of the Equality Act 2010.

Membership

The Members of the Select Committee on the Equality Act 2010 and Disability were:

Baroness Brinton
Baroness Browning
Baroness Campbell of Surbiton
Baroness Deech (Chairman)
Lord Faulkner of Worcester
Lord Foster of Bishop Auckland (from 9 July 2015)
Lord Harrison
Baroness Jenkin of Kennington
Lord McColl of Dulwich
Lord Northbrook
Baroness Pitkeathley
Baroness Thomas of Winchester
Baroness Wilkins (resigned 9 July 2015)

Declaration of interests

See Appendix 1.

A full list of Members' interests can be found in the Register of Lords' Interests:
http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests

Publications

All publications of the Committee are available at:
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Committee staff

The staff who worked on this Committee were Michael Collon (Clerk), Tansy Hutchinson (Policy Analyst), Andrew Woollatt (Committee Assistant) and Joseph Coley (Committee Assistant).

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Evidence is published online at www.parliament.uk/equality-act-committee and available for inspection at the Parliamentary Archives (020 7129 3074).

Q in footnotes refers to a question in oral evidence.

SUMMARY

Introduction

There are over 11 million disabled people in the United Kingdom, and the number grows year by year. **Disability affects us all**—as disabled people ourselves, and as the carers, family, friends, employers, colleagues, and educators of disabled people—and it is the task of all of us to remove the barriers that prevent some from participating fully, and equally, in society.

Our approach: how can the Act work better?

The Equality Act 2010 is the legislative framework. We have been examining whether it adequately supports the fight against disability discrimination. Our conclusion is that much more needs to be done. Our witnesses, who included wheelchair users, blind and deaf people, and some with learning difficulties, were almost unanimous in believing that it was a mistake to have attempted to deal with discrimination on grounds of disability, sex, race and other protected characteristics in a single Equality Act. Life, they told us, had been easier with a dedicated Disability Discrimination Act and with a single Disability Rights Commission, rather than a Commission covering all inequalities and human rights. But it would now be impractical to try to reverse this. We have therefore been looking to see how the Equality Act can be made to work better for disabled people.

Red Tape Challenge: a pretext for removing protection

Many of the laws and practices which help disabled people require action from public authorities, employers and others. All too often the Government has characterised this as red tape, and made changes under the Red Tape Challenge which increase the problems of disabled people. These must be reversed. The Government, instead of concentrating on the burden on businesses, should be looking at the burden on disabled people.

Public sector equality duty: a fundamental flaw

When the Government and public authorities are formulating their policies, they have a duty to "have due regard" to the need to eliminate discrimination and advance equality of opportunity. This wording allows them to consider all the evidence, but still to pursue plainly discriminatory policies. We recommend that the wording should be strengthened, so that the discriminatory consequences of their decisions can no longer be ignored.

Transport: 20 years of inertia

Provisions on the carriage of wheelchair users in taxis have been on the statute book for twenty years, and still the Government refuses to bring them into force. Its reasons for not doing so do not stand up. It should now bring into force these and other provisions of the Act which have been ineffective for so long.

Employers and providers of services have a duty to make reasonable adjustments to support disabled people. It is scarcely credible that the first plans for Crossrail included seven stations without step-free access; some will still not have step-free access when Crossrail opens. We have made recommendations for changes which the Government, train and bus companies could make to reduce the

burden on disabled people when they travel. They include speeding up the process of installing audio-visual annunciators.

Leisure facilities and housing: too often inaccessible

Many of the pleasures which most of us take for granted are denied to disabled people. Access to sports grounds is one of them. The FA Premier League has, not before time, given an undertaking that its clubs will comply with the accessible stadia guidelines by August 2017. The Accessible Sports Grounds Bill, which was passed by the House of Lords but blocked in the Commons, would have ensured that this would happen.

Too many restaurants, pubs and clubs are difficult to access; many do not provide such basic facilities as a disabled toilet. A one-line amendment to the Licensing Act 2003 would allow local authorities to refuse to grant or renew their licences until they make the necessary changes. The design of new dwellings is another area where local authorities could, simply by revising their planning policies, require new buildings to be wheelchair accessible or adaptable. London has done so; others should follow.

Access to justice: increasing restrictions must be eased

Where there is discrimination, it should not be for disabled people alone to seek to assert their rights through the courts. Here the Government, by imposing tribunal fees, withdrawing legal aid and changing the costs rules, has hindered, not helped. There are improvements that can be made, some of them cost-free. We have called for changes so that disabled people are not prevented from starting litigation by the fear of becoming liable for excessive costs of the other party. We also believe that charities representing disabled people should be allowed to litigate on their behalf.

EHRC support: helpline and conciliation should be restored

We have examined how the Equality and Human Rights Commission could do more to support disabled people. In 2012 the Government removed its helpline, and gave the work to an external company. This has been much criticised. The responsibility for providing advice should be restored to the EHRC. The EHRC used to have the power to arrange conciliation in non-employment cases, the majority of which are disability cases. This was one of the casualties of the Red Tape Challenge. We would like to see that power restored.

Communication: access needs are being ignored

Communication is a perennial problem. There is too little awareness of the needs of disabled people, especially among the Government departments and public bodies on whom we all rely, and whose websites and documents often ignore those with particular access needs.

Practical recommendations: many changes are simple and cost nothing

The needs of disabled people are many and complex. Much more could be done with additional resources. But we recognise that we live in a time of austerity, and our recommendations bear this in mind. Many are for changes which are simple, and cost-free to the taxpayer. Most could be rapidly implemented. We urge the Government to make this happen.

The Equality Act 2010: the impact on disabled people

CHAPTER 1: INTRODUCTION

Constitution and Terms of Reference of the Committee

1. Our inquiry started last year, half a century after the enactment of the first Race Relations Act, 40 years after the Sex Discrimination Act was passed, 20 years after the first Disability Discrimination Act, and 10 years after the second. It was also five years since the enactment of the Equality Act 2010 which brought together all this major reforming legislation into one statute.[1] But the Equality Act[2] was not simply a consolidating Act; it expanded the anti-discrimination law applying to race, sex and disability, and applied the same principles to age, gender reassignment, marriage and civil partnership, religion or belief, sexual orientation, and pregnancy and maternity–the nine "protected characteristics" covered by the Act. It is thus a major piece of legislation designed to protect and promote the interests of some of the most vulnerable members of society. Whether or not it is adequately doing so is the question we have been considering in the course of our inquiry.

2. It was the House of Lords Constitution Committee which recommended in 2004[3] that Government departments should carry out post-legislative scrutiny of all significant primary legislation, other than Finance Acts, within three years of its entry into force. The Government's conclusion was that scrutiny was not appropriate for all legislation, and that there should be a selective approach. Government departments should submit a post-legislative scrutiny memorandum to the appropriate Commons committee, and it would be for that committee to decide whether or not to conduct a scrutiny.

3. The Equality Act received the Royal Assent on 8 April 2010. Most of the main provisions were brought into force by 1 October 2010; those on the Public Sector Equality Duty (PSED)[4] came into force on 5 April 2011. Post-legislative scrutiny of this Act is plainly not just desirable, but essential. At the end of March 2015, in anticipation of the setting up of this Committee, officials of the Government Equalities Office were requested to prepare a Memorandum on the Equality Act 2010. They did so, and it was presented to Parliament in July 2015[5] by the Secretary of State for Education, who is also Minister for Women and Equalities and, as such, responsible for the Government Equalities Office.

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1 The Race Relations Act 1965 had already been repealed and replaced by the Race Relations Act 1976.

2 In this report, references to "the Equality Act", or "the Act", are to the Equality Act 2010. Some of our witnesses referred to it as "EA". References to the Equality Act 2006 give the full short title.

3 Constitution Committee, *Parliament and the Legislative Process* (14th Report, Session 2003–04, HL Paper 173-I)

4 See Chapter 8

5 Government Equalities Office, *Memorandum to the Women and Equalities Select Committee on the Post-Legislative Assessment of the Equality Act 2010*, Cm 9101, July 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441838/Memo_to_Women_Equalities.pdf [accessed 2 March 2016]

4. The Memorandum covers the whole Act which, as we have said, is very wide-ranging. Thorough post-legislative scrutiny of the whole Act would have been a greater task than one committee could sensibly tackle in a single session. The suggestion made to the Liaison Committee[6] was that a committee should be set up to conduct post-legislative scrutiny of the disability provisions of the Act. The Liaison Committee accepted this, and on 3 March 2015 recommended "the appointment of an *ad hoc* post-legislative scrutiny committee to consider the impact on people with disabilities of the Equality Act 2010."[7] The House adopted this proposal, and on 11 June 2015 appointed this Committee with those terms of reference.[8]

5. The task of a post-legislative scrutiny committee is not confined to the Act which is the subject of the scrutiny. Such a committee invariably also considers related legislation (both primary and secondary), the implementation of the legislation, and matters which in its opinion should perhaps be the subject of the legislation, but are not.

6. The Liaison Committee said: "An *ad hoc* committee could consider:

   - Adequacy of the Law: Has the Act achieved the aim of harmonising and strengthening disability discrimination law? Are there gaps in legal protection against discrimination that impact on the ability of disabled people to participate fully in, and contribute to, society with dignity and respect?

   - Implementation: Are the reasonable adjustment provisions of the Equality Act 2010 being implemented in access to goods and services available to the public? Does the division of responsibilities across several Government Departments support effective implementation?

   - Enforcement: Are the enforcement mechanisms accessible and effective for people with disabilities and service providers? How effective is the Equality and Human Rights Commission in fulfilling its enforcement and regulatory role in respect of disability discrimination?"

   As will be clear from this report, we have seen it as our task to consider all these matters, and many more.

The devolved administrations

7. The whole of the Equality Act applies to England and Wales, and all the disability provisions except section 190 (improvements to let dwelling houses) apply to Scotland. However, much of the Act relates to matters which are the responsibility of the devolved administrations. Where our recommendations to the Government deal with such matters, we hope that the Scottish and Welsh ministers will bear them in mind and, where they see fit, make appropriate changes to their laws and practices.

8. The Act does not extend to Northern Ireland, where the Disability Discrimination Act 1995 is still in force, though considerably amended.[9]

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6 By Baroness Thomas of Winchester, a member of this Committee.
7 Liaison Committee, *Review of select committee activity and proposals for new committee activity* (2nd Report, Session 2014–15, HL Paper 127, para 39)
8 The membership of the Committee is set out in Appendix 1
9 Principally by the the Disability Discrimination (Northern Ireland) Order 2006 (SI 2006/312)

We hope nevertheless that Northern Ireland Ministers will find our recommendations useful.

Our working methods

9. We issued a Call for Evidence on 25 June 2015,[10] and two weeks later we issued it in EasyRead format. We then received representations from the British Deaf Association, a charity representing people with hearing disabilities, that they should have the opportunity to receive the Call for Evidence in British Sign Language (BSL), and to give evidence in BSL, notwithstanding that this was a call for written evidence. The point at issue was the status of BSL as a language, something we discuss at paragraphs 171–181. We agreed to issue the Call for Evidence in BSL, and to accept evidence in BSL provided that it was accompanied by an audio transcription or subtitles. In the event we received no such evidence.

10. We received and accepted as evidence 144 responses to the Call for Evidence.[11] We heard oral evidence from 53 witnesses, and from some of them we received supplementary written evidence. Some who had already sent us written evidence would have liked to expand on their views in oral evidence; we were sorry that the constraints of time did not always allow this. The witnesses are listed in Appendix 2. To all of them we are most grateful. Their evidence was invaluable, and forms the basis of our work.

11. A number of members of this Committee have personal experience of the difficulties which disabled people face when they attempt to go about their normal day-to-day activities. We were determined to hear from as wide a range as possible of persons with different disabilities, and took evidence from witnesses with physical disabilities, mental health problems, learning difficulties and visual impairments. To obtain the views of deaf people, on 27 October 2015 we took evidence from officials of the British Deaf Association in BSL. In 2014 the House of Commons Select Committee on Work and Pensions had taken evidence using BSL, to enable their witnesses to understand what was said by members of the Committee, but this was the first occasion on which a Lords committee had done so. Additionally, it was the first occasion on which a committee of either House had received evidence from witnesses through BSL interpreters. The arrangements had to allow the members of the Committee and the witnesses, and additionally members of the public in the Committee room and those following the proceedings on the webcast, to see and, where possible, to hear both those who were speaking and those who were signing. The transcript which constitutes the formal record of the evidence is thus a transcript of what was said by Committee members and by the signers interpreting the BSL of the witnesses. The House of Lords has since endorsed this as a procedure for committees to receive evidence.[12]

12. On 15 September 2015 six members of the Committee visited the offices of Real, an organisation in Tower Hamlets run by and for disabled people. This

10 See Appendix 3

11 In the case of some of these, before publication on the Committee's website we redacted details of individuals to prevent them from being identified. We also received 21 submissions which we did not accept as evidence because they were not relevant to the subject of the inquiry or did not advance its work.

12 Procedure Committee, *Changes to the leave of absence scheme, ballot for oral question slots during recesses, status of interpreted or translated evidence to select committees* (1st Report, Session 2015–16, HL Paper 62, paras 7–8). The report was agreed by the House on 16 December 2015.

again enabled the Committee to speak directly with a wide range of disabled people. We were most impressed by what we heard and saw. A note of the visit is at Appendix 4.

13. As is usual in Select Committee reports, our main conclusions and all our recommendations are listed in the final chapter. We have also thought it useful to list separately in Appendix 5 those recommendations whose implementation will need primary or secondary legislation.

Acknowledgements

14. Throughout the course of our inquiry we have been fortunate to have had the assistance of Catherine Casserley as our specialist adviser. She is a barrister whose particular expertise is in the field of disability discrimination.[13] We are most grateful to her for her contribution to our work.

Five major issues

15. In the course of our lengthy evidence taking we have repeatedly been struck by five major issues. We place these at the forefront of our report, and elaborate on them in subsequent chapters.

16. First, in planning services and buildings, despite the fact that for twenty years the law has required anticipatory reasonable adjustment, the needs of disabled people still tend to be an afterthought. It is time to reverse this. We are all living longer, and medical advances are keeping us alive where in earlier years it would have failed to do so, but not necessarily in good health. We should from the outset plan for the inevitability of disability in everyone as they get older, as well as for those who suffer accidents and for all those other disabled people who are the subject of our inquiry.

17. Our second theme, closely related to the first, is the need to be proactive, rather than reactive or process driven. Many of those involved—Government departments, local authorities, the NHS, schools, courts, businesses, all of us—wait for problems to arise before, at best, attempting to remedy them. We should be planning so that disabled people can as far as possible avoid facing the problems in the first place.

18. Thirdly, there is the issue of communication. So many of the problems of disabled people are exacerbated by a failure to make them aware of their rights in a manner that is clear and is adapted to their needs. But communication is a two-way process. If all those responding to the needs of disabled people engaged with them, listened to them, and took account of their views, all would benefit.

19. Rights which are unenforceable are not worth having. The law and the courts must adapt so that rights can be made effective as easily, quickly and cheaply as possible.

20. Lastly, it is the Government that bears ultimate responsibility for disabled people, and it must be structured to discharge that responsibility. Currently it is not.

13 As such, she has acted as Counsel in a number of the cases to which we refer in this report. Her interests are listed in Appendix 1.

The next steps

21. This report will be debated after the Government has given us its response to the conclusions we have reached and to the recommendations we have made. Successive governments have undertaken to do so within two months of the publication of the report. In the past, governments have often taken three months or more to respond to reports. This time last year, when a general election intervened, this was perhaps understandable. We do not see that this year any delay could be justified.

22. Sessional committees, whose appointment continues from one session to the next, can follow up their reports with subsequent reports analysing the Government's response, and can summon ministers to give evidence to explain their actions or inaction. Committees like ours, set up for a particular purpose, cease to exist on publication of their report, and in the past have been able to rely only on debates and questions in the House to follow up their reports. However in the last year the Liaison Committee has agreed to follow up the recommendations of ad hoc committees.

23. Additionally, in the particular case of our Committee we are fortunate that the House of Commons set up at the beginning of this session a Select Committee on Women and Equalities. Equal treatment of disabled people is therefore also one of their interests. At the start of our inquiry our Chairman, Baroness Deech, met their Chair, Rt Hon Maria Miller MP. They agreed that, to avoid the work of the two Committees overlapping, the Commons Committee would not embark on disability-related inquiries until after we had reported, but that once our Committee had reported and the Government had had an opportunity to respond, they would pick up our work of promoting the interests of disabled people. We very much welcome this development, and we trust that the Commons Committee will press for the implementation of the recommendations we make.

CHAPTER 2: THE BACKGROUND TO THE EQUALITY ACT 2010

Statistics and demographic changes: the scale of the problem

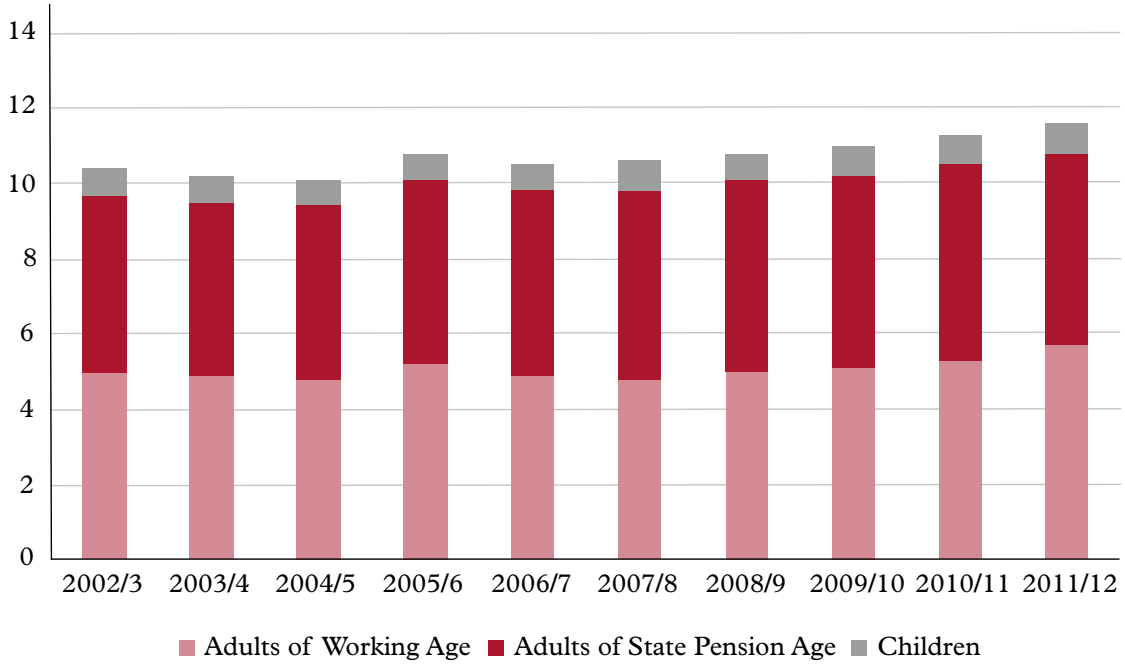
24. Before we consider the provisions of the Equality Act, we need to be clear about the scale of the challenge which society faces, and with which the Act attempts to deal. The table and bar chart below, published by the Office for Disability Issues (ODI) in May 2014, shows that in the 10 years before 2011/12 there were fluctuations in the estimates of the numbers of disabled people in Great Britain, but that the trend is upwards. In the last year for which figures are available there were 11.6 million disabled people in Great Britain, 18.5% of the population, of whom 5.7 million were adults of working age,[14] 5.1 million were over state pension age[15] and 0.8 million were children. 5.4 million were male and 6.3 million female.[16]

Table 1: Number of disabled people in Great Britain (millions)

Year	Adults of Working Age	Adults of State Pension Age	All Adults	Children	All Ages
2002/03	5.0	4.7	9.7	0.7	10.4
2003/04	4.9	4.6	9.5	0.7	10.1
2004/05	4.8	4.6	9.5	0.7	10.1
2005/06	5.2	4.9	10.1	0.7	10.8
2006/07	4.9	4.9	9.8	0.7	10.4
2007/08	4.8	5.0	9.8	0.8	10.6
2008/09	5.0	5.1	10.1	0.7	10.9
2009/10	5.1	5.1	10.2	0.8	11.0
2010/11	5.3	5.2	10.4	0.8	11.2
2011/12	5.7	5.1	10.8	0.8	11.6

14 Men aged 16–64 and women aged 16–59.
15 65 for men and 60 for women.
16 Totals are rounded to nearest 0.1m and may not add up.

Figure 1: Number of disabled people in Great Britain (millions)



Source: Office for Disability Issues, Disability prevalence estimates 2002/03 to 2011/12, January 2014: https://www.gov.uk/government/statistics/disability-prevalence-estimates-200203-to-201112-apr-to-mar *[accessed 17 March 2016]*

25. Wales and Scotland have a higher proportion of disabled people than England, and the divergences are striking. Below are separate charts showing for men and for women the disability-free life expectancy (DFLE) at birth in the United Kingdom and its constituent countries in 2005–07 and 2008–10. They reflect of course the differences in the overall life expectancy, but it will be seen that, for men, in the three years between the surveys DFLE has increased for every country except Scotland. In Wales it has increased by 3.5 years; in Scotland it has actually decreased by 2.5 years.[17]

17 The health data collected by the Office for National Statistics (ONS) to calculate DFLE was gathered by asking people: "Do you have any long-standing illness, disability or infirmity – by long-standing illness, I mean anything that has troubled you over a period of time or that is likely to affect you over a period of time?" (Yes/No) If the answer was 'Yes' then the respondent was asked: "Does this illness or disability (do any of these illnesses or disabilities) limit your activities in any way?" (Yes/No) If the respondent answered 'Yes' to both questions they were classified as having a limiting persistent illness or disability. If the respondent answered 'No', they were classified as being free from (limiting illness or) disability.

Figure 2: Male disability-free life expectancy at birth, 2005–07 and 2008–10

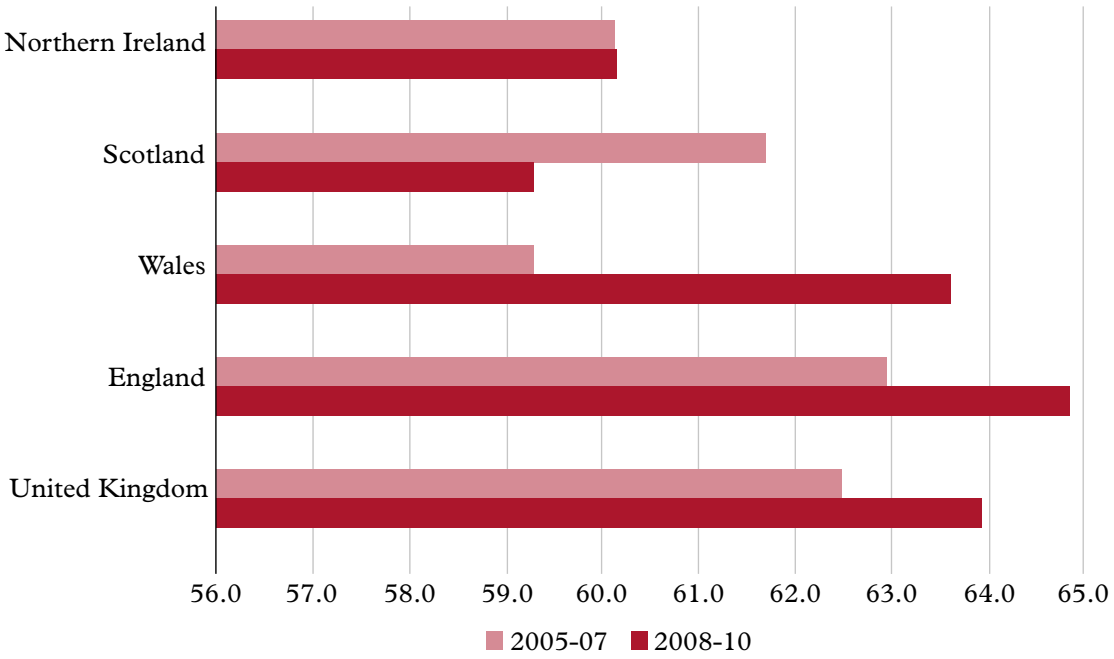
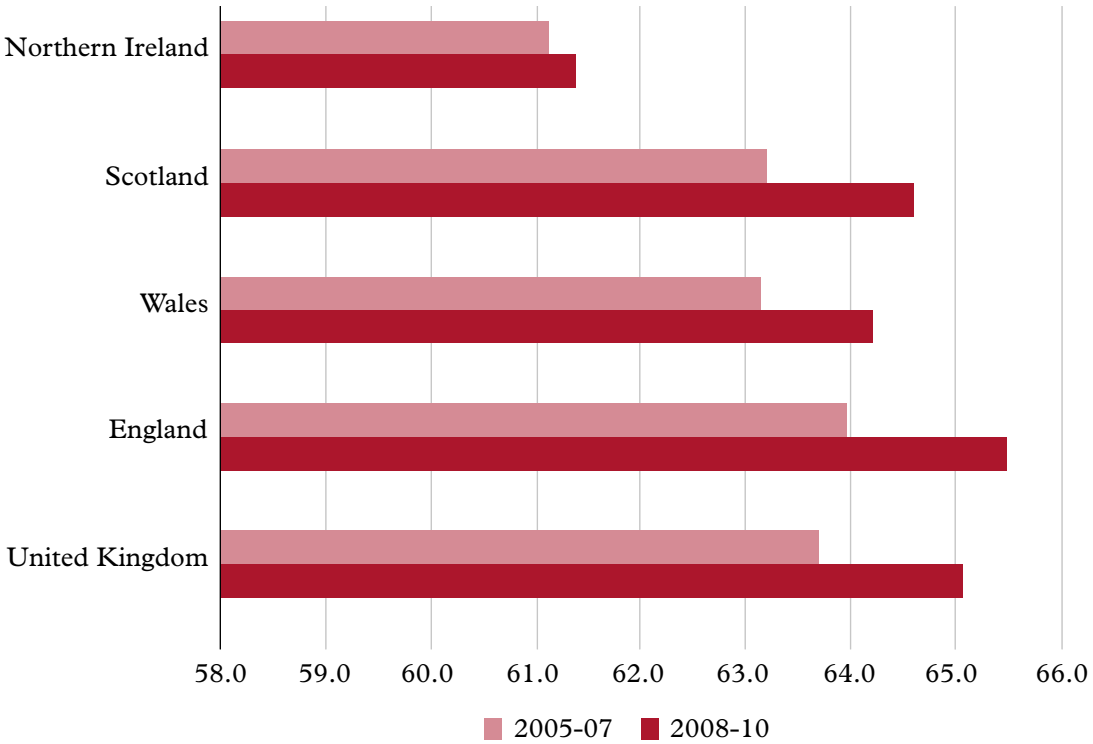


Figure 3: Female disability-free life expectancy at birth, 2005–07 and 2008–10



Source: Office for National Statistics, Health Expectancies at Birth and at Age 65 in the United Kingdom, 2008–2010, August 2012, p 16: http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/dcp171778_277684.pdf *[accessed 17 March 2016]*

26. Figures recently released by the Office for National Statistics (ONS) show that the trend is changing. Life expectancy continues to increase, but in England for both men and women there has been a marked decrease in

disability-free life expectancy from 2009–11 to 2012–14. For men it has gone down from 63.9 to 63.3 years, for women from 64.4 to 63.2 years, lower even than for men. As the charts below show, this trend applies in every part of England, but the divergences between regions are striking. In 2009–11, at birth men in South-East England could expect 5.7 years longer disability-free than men in the North-East; by 2012–14 the difference was still 4.7 years.

Figure 4: Disability-free life expectancy at birth for men in England by region, 2009–11 and 2012–14

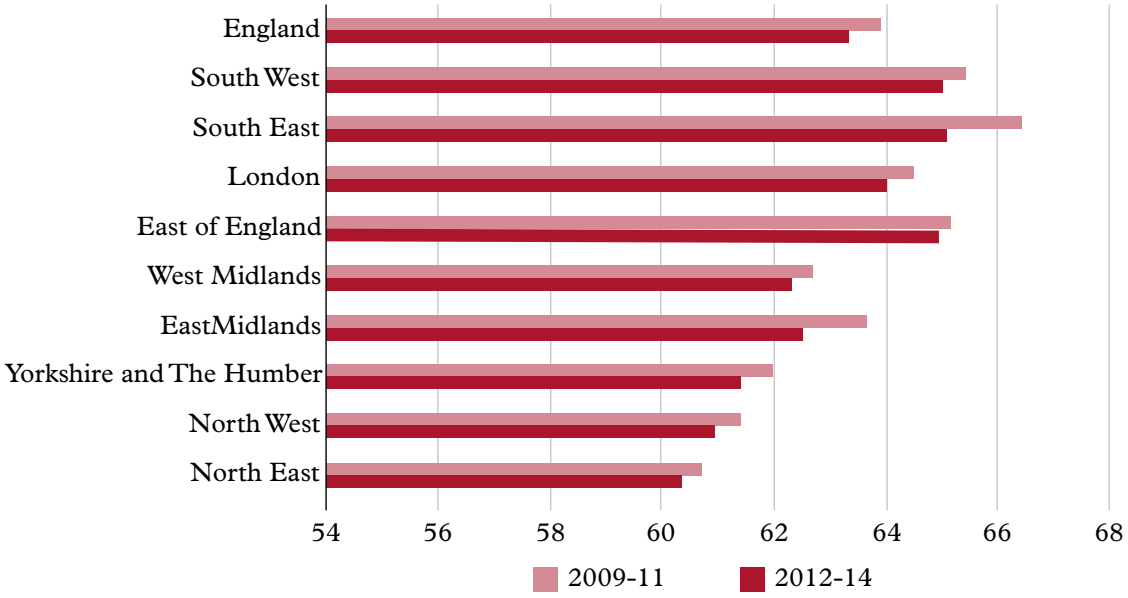
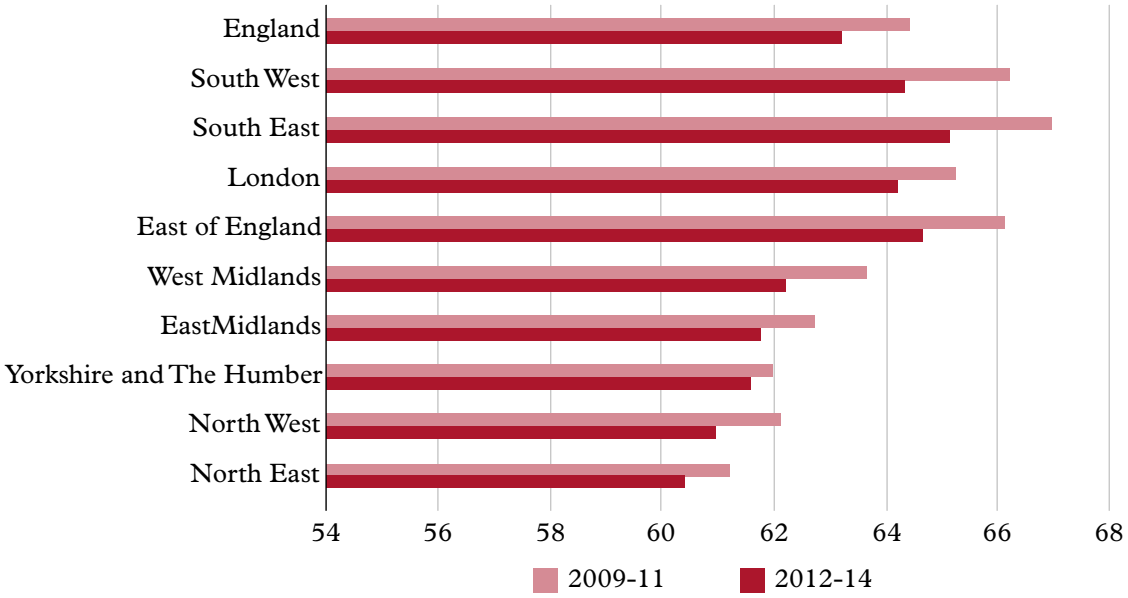


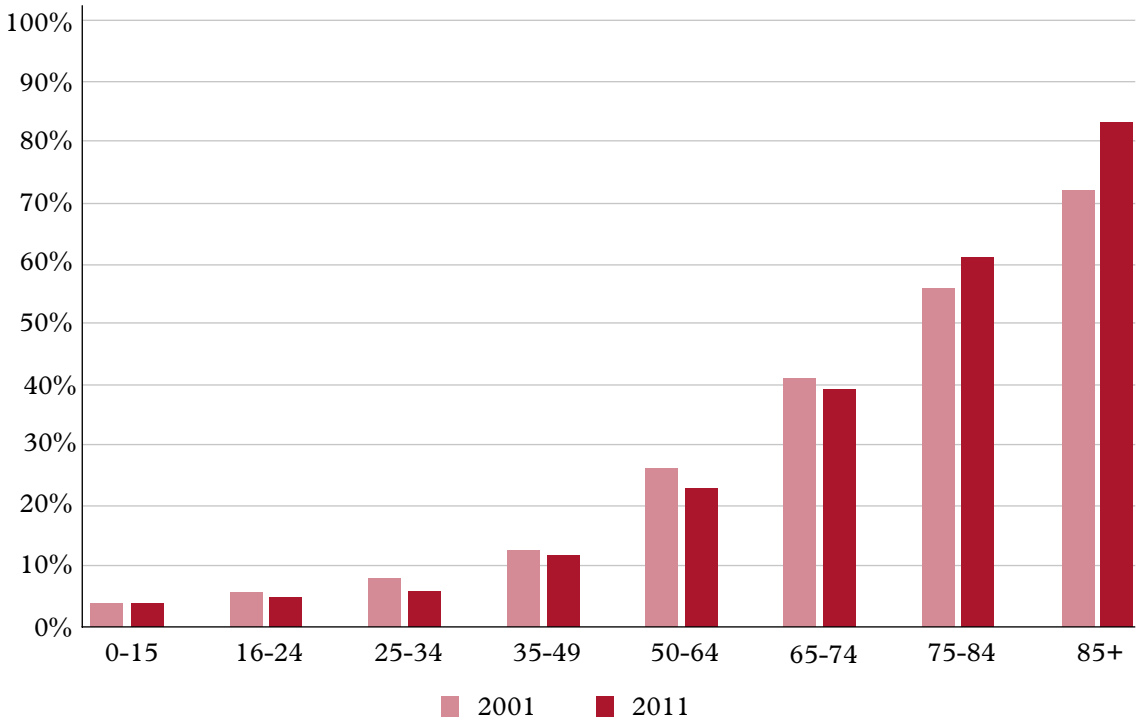
Figure 5: Disability-free life expectancy at birth for women in England by region, 2009–11 and 2012–14



Source: Office for National Statistics, 'Disability-Free Life Expectancy (DFLE) and Life Expectancy (LE) at birth by Region, England': http://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/datasets/disabilityfreelifeexpectancydfleandlifeexpectancyleatbirthbyregionengland *[accessed 17 March 2016]*

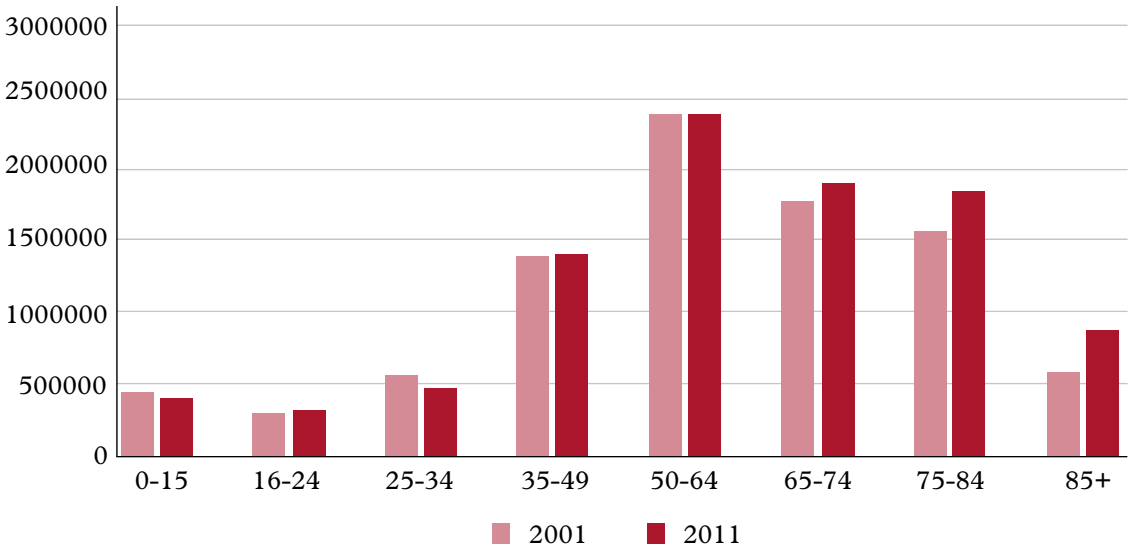
27. We reproduce charts showing trends in long-term limiting disabilities over the years 2001 to 2011. The proportion increases steeply by age, as the first chart shows, and as one would expect. The second chart shows that, when combined with decreasing numbers in each age group, it is actually the 50–64 age group which shows the greatest number with a long-term limiting disability.

Figure 6: Proportion in age groups reporting a long-term limiting illness or disability in 2001 and 2011



Source: Joseph Rowntree Foundation, 'Rate of long-term limiting illness or disability by age over time': http://www.jrf.org.uk/data/rate-long-term-limiting-illness-or-disability-age-over-time *[accessed 17 March 2016]*

Figure 7: Numbers in age groups reporting a long-term limiting illness or disability in 2001 and 2011



Source: Joseph Rowntree Foundation, 'Long-term limiting illness or disability numbers by age over time': http://www.jrf.org.uk/data/long-term-limiting-illness-or-disability-numbers-age-over-time *[accessed 17 March 2016]*

28. In November 2014 the ONS published the following table which shows LE and DFLE at age 65. From this it appears that, in the space of nine years, the time men aged 65 could expect to spend disability-free had increased by 3.3% or 1.7 years, but the increase in LE meant that the time they could expect to live with a disability had nevertheless grown by 0.4 years. For women, the proportion of their life spent disability-free had actually decreased, and they could expect to live almost a year longer with a disability.

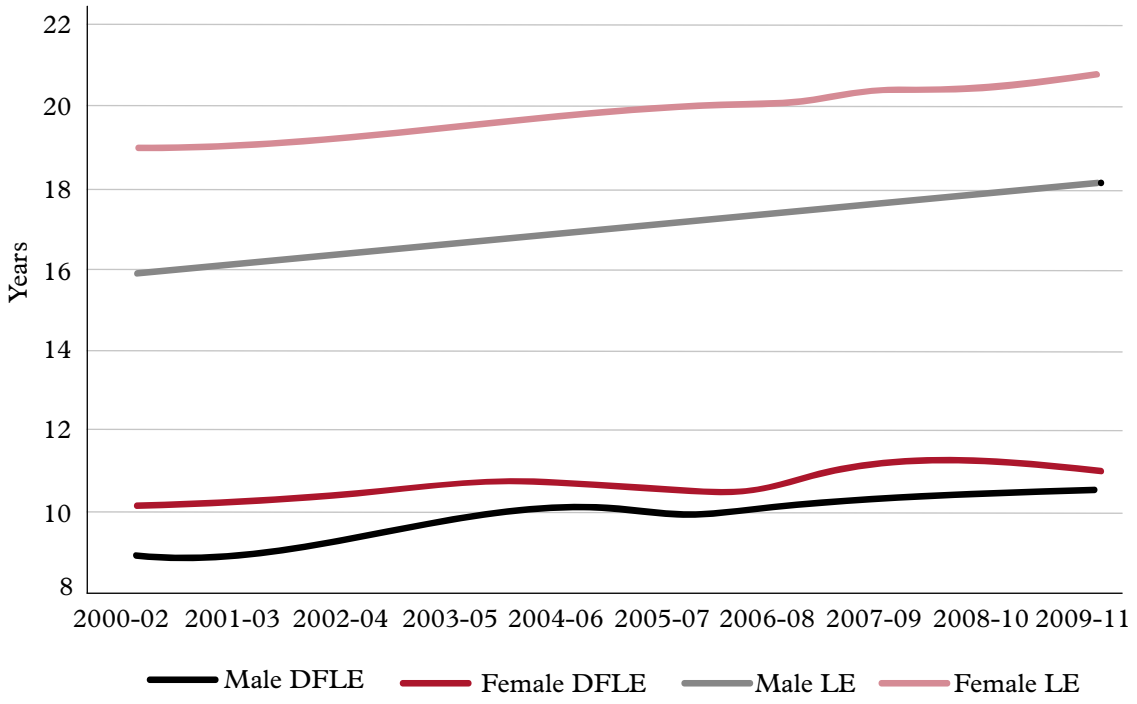
Table 2: Life expectancy and disability-free life expectancy at age 65

		Life expectancy (years)	DFLE	Proportion of life spent disability-free (%)	Years spent with a disability
Women	2000–02	19.0	10.2	53.8	8.8
	2009–11	20.7	11.0	53.2	9.7
	Increase	1.6	0.8	-0.6	0.9
Men	2000–02	15.9	8.8	55.2	7.1
	2009–11	18.0	10.5	58.5	7.5
	Increase	2.1	1.7	3.3	0.4

Source: Office for National Statistics, 'Changes in Disability-Free Life Expectancy (DFLE)': http://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/datasets/changesindisabilityfreelifeexpectancydfle *[accessed 17 March 2016]*

29. The chart below gives a graphical illustration of this increase in the years spent with a disability.

Figure 8: Life expectancy and disability-free life expectancy at age 65, 2000–2011



Source: Office for National Statistics, 'Health Expectancies in the United Kingdom, Great Britain, England, Wales, Scotland & Northern Ireland': http://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/datasets/healthexpectanciesintheunitedkingdomgreatbritainenglandwalesscotlandnorthernireland *[accessed 17 March 2016]*

30. There will inevitably be sampling and other errors in the collation of all these figures, and all tables with expectation of life involve assumptions, and show a wider degree of uncertainty the further one looks into the future. But three things are incontrovertible. First, as life expectancy grows, so does the time for which we can expect to be disabled. Second, women can expect to be disabled longer than men. And third, there are regional variations which are very marked and are only slowly decreasing.

Development of the substantive law

31. The Disability Discrimination Act 1995[18] was not the first United Kingdom statute to attempt to counteract the discrimination suffered by disabled people,[19] but it was the first statute to make it unlawful for employers and suppliers of goods and services to discriminate against disabled people. In the White Paper introducing the Bill, the then Minister for Disabled People, William Hague MP,[20] described the proposals as representing "a historic advance for disabled people".[21] He was not exaggerating. In its own field, the Act represented as big a step forward as the Race Relations Act 1965 and the Sex Discrimination Act 1975 did in those fields.

32. As Mr Hague said during the second reading of the Bill, "it is utterly wrong that disabled people are restricted or excluded from some aspects of life. We all must come to terms with including people with a disability in our work, travel, study and leisure—all the more so because our ageing population will bring with it an increasing number of people with some kind of disability."

33. The DDA introduced for the first time the concept of "reasonable adjustment". The provisions on employment provided a new right broadly on the lines of the then current anti-discrimination provisions for race and gender or sex, but with the additional requirement for employers to make reasonable adjustments to remove barriers in the workplace that would otherwise disadvantage disabled people. The right applied when disabled people applied for work or took up employment, and when people became disabled during their working lives. It did not however apply to firms employing fewer than 20 people.

34. Service providers were also required to make reasonable adjustments. The duty came into force in stages. From 1999 they were required for the first time to change policies, practices and procedures that made it impossible or unreasonably difficult for disabled people to make use of goods and services, and they were also required to take reasonable steps to provide auxiliary aids and services, such as information in alternative formats, or BSL interpreters. In 2004, they were required to take reasonable steps to remove physical barriers to help disabled people gain access to goods, facilities and services. Moreover, in the case of services the duty to make reasonable adjustments was and is anticipatory; it is owed, not to individuals, but to disabled people generally, so that the service provider must consider in advance what

18 In this report we refer to this Act as the DDA, as do many of our witnesses. When we refer to the Disability Discrimination Act 2005, we give the full short title.

19 See for example the Disabled Persons (Employment) Act 1944 and the Chronically Sick and Disabled Persons Act 1970. The latter Act was introduced by a Private Member, Alf Morris MP, who in 1974 was appointed the United Kingdom's first Minister for Disabled People. In 1997 he became Lord Morris of Manchester. He died in 2012.

20 Now Lord Hague of Richmond.

21 Department of Social Security, *Ending discrimination against disabled people,* Cm 2729, January 1995, Foreword https://www.gov.uk/government/publications/ending-discrimination-against-disabled-people [accessed 2 March 2016]

reasonable adjustments should be made to allow disabled people to make use of the service.

35. The Special Educational Needs and Disability Act 2001 strengthened the right of children with special educational needs (SEN) to be educated in mainstream schools, and broadened the jurisdiction of the Special Educational Needs Tribunal to include appeals against disability discrimination in education (with the corresponding change to the title of the tribunal).

36. In 2004 the Disability Discrimination Act 1995 (Amendment) Regulations 2003[22] came into force. In relation to employment, these Regulations gave effect to the disability discrimination provisions of the EU Equal Treatment Directive.[23] Changes in the legislation, and a large and growing body of case law, have made the concept of reasonable adjustment increasingly complex, and in Chapter 5 we consider how it could be made more effective.

37. The next major expansion of the legislation came with the Disability Discrimination Act 2005, which extended the concept of reasonable adjustment to housing and made it unlawful for public authorities to discriminate against disabled people, including by requiring public authorities to make reasonable adjustments. The most significant change introduced by the Act was the creation of the public sector equality duty (PSED), imposing on public authorities a positive duty, in carrying out their functions, to have due regard to the needs of disabled people. In Chapter 8 we consider the PSED as it currently is, and what should be done to improve it.

Oversight of the law

38. The National Disability Council, which the DDA set up, was essentially an advisory body, and it was left to the Disability Rights Commission Act 1999 to establish a body with powers in relation to disabled people as wide as those of the Commission for Racial Equality or the Equal Opportunities Commission in their respective fields. But the existence of the Disability Rights Commission was short. The Equality Act 2006 dissolved all three of these Commissions and set up a single Commission for Equality and Human Rights (invariably called the Equality and Human Rights Commission, or EHRC) to take their place, and to oversee the fight against discrimination, not just on the grounds of race, sex and disability, but also on the grounds of sexual orientation, religion or belief, and age.

39. In the following chapter we consider in more detail the powers and duties of the EHRC, and how effectively it has discharged its duties.

The Equality Act 2010

40. The position in 2006 was that a single body was in charge of "encouraging and supporting the development of a society in which (a) people's ability to achieve their potential is not limited by prejudice or discrimination, (b) there is respect for and protection of each individual's human rights, (c) there is respect for the dignity and worth of each individual, (d) each individual has an equal opportunity to participate in society, and (e) there is mutual respect between groups based on understanding and valuing of diversity and on

22 The Disability Discrimination Act 1995 (Amendment) Regulations 2003 (SI 2003/1673)

23 Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, OJ No L 303, 2 December 2000.

shared respect for equality and human rights."[24] However the substantive law governing these matters was set out in four different statutes[25] which, while they had similar purposes, were expressed in very different ways. It was therefore inevitable that there would be moves to consolidate, simplify and amplify these statutes.

41. As far back as 2000, the Independent Review of the Enforcement of UK Anti-Discrimination Legislation (the "Hepple Report") had recommended the enactment of comprehensive equality legislation to increase levels of protection across the different equality grounds, and to ensure greater clarity and consistency in anti-discrimination law. In 2003, Lord Lester of Herne Hill QC introduced in the House of Lords an Equality Bill which made provision for single, comprehensive and unified equality legislation. The Bill was passed in this House but failed to find time for a second reading in the House of Commons.

42. In 2004, during the consultation on the establishment of the Equality and Human Rights Commission, some support was expressed for the introduction of a single Equality Bill to provide a coherent legislative framework for the new Commission's work. As a result in February 2005, before the Bill for the Equality Act 2006 had even been introduced, the Government established the Discrimination Law Review to consider "the opportunities for creating a clearer and more streamlined equality legislation framework which produces better outcomes for those who experience disadvantage … while reflecting better regulation principles", and in its 2005 general election manifesto the Labour party undertook to introduce a Single Equality Bill during the course of that Parliament. The Government published a consultation paper in June 2007,[26] and the following year the Government published its response to the consultation paper and a White paper with its policy decisions.[27]

43. On 24 April 2009 the Government introduced its Equality Bill, bringing together the relevant domestic law:

- the Equal Pay Act 1970;
- the Sex Discrimination Act 1975;
- the Race Relations Act 1976;
- the Disability Discrimination Act 1995;
- the Employment Equality (Religion or Belief) Regulations 2003;
- the Employment Equality (Sexual Orientation) Regulations 2003;

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24 Equality Act 2006, section 3

25 The Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995, together with a number of amending statutes, some provisions of other statutes, and a large amount of subordinate legislation.

26 Department for Communities and Local Government, *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain, A Consultation Paper* (June 2007) : http://webarchive.nationalarchives.gov.uk/20120919132719/www.communities.gov.uk/documents/corporate/pdf/325332.pdf [accessed 2 March 2016]

27 Government Equalities Office *Framework for a fairer future - the Equality Bill*, Cm 7431, June 2008: https://www.gov.uk/government/publications/framework-for-a-fairer-future-the-equality-bill-june-2008 [accessed 2 March 2016] and Government Equalities Office *The Equality Bill: Government response to the consultation*, Cm 7454, July 2008: https://www.gov.uk/government/publications/the-equality-bill-government-response-to-the-consultation [accessed 2 March 2016]

- the Disability Discrimination Act 2005;[28]
- the Employment Equality (Age) Regulations 2006;
- the Equality Act 2006, Part 2;
- the Equality Act (Sexual Orientation) Regulations 2007.

44. The disability provisions of the draft Bill had already been considered by the Commons Work and Pensions Committee,[29] and the Bill as a whole was considered by the Joint Committee on Human Rights whose report[30] was however published only on 12 November 2009, the day on which the Bill fell with the Prorogation of Parliament. The Bill was carried over in the new session 2009–10, and received the Royal Assent on 8 April 2010, at the Dissolution of that Parliament. Most of the main provisions of the Act came into force on 1 October 2010.

Disability: the poor relation?

45. Section 4 of the Act lists the nine "protected characteristics" to which it applies: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. All the developments in the first decade of this century were based on the premise that bringing the law on all these together must inevitably benefit them all. And, to a great extent, that does seem to have been the case. But it ignores a crucial distinction between disability and the other protected characteristics. For the other protected characteristics, with the possible exception of pregnancy and maternity, equality of opportunity is largely achieved by equality of treatment. For disabled people, equality of opportunity, to the extent that it is achievable, often requires different treatment.

46. In written evidence the Trades Union Congress (TUC) suggested that "employers and sometimes members of the judiciary seem to struggle with the concept of treating disabled people more favourably to achieve equality in practice."[31] The Disability Law Service said:[32] "Many employers do not understand that they can, and should, treat disabled people more favourably than others when making adjustments under the [Equality Act]. Many of our callers tell us that their employer has specifically told them that they cannot show any 'favouritism' to them, when altering working arrangements." IPSEA (Independent Parental Special Educational Advice) said: "One of the problems with consolidating the protected characteristics is it gives the impression that disability, as a protected characteristic, is to be promoted by way of equal treatment, as happens with the other characteristics protected under the Act. … It is often surprising to people that disability is the only characteristic in respect of which equal treatment could potentially discriminate; something of which we believe there is a poor awareness amongst some education professionals."[33]

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28 Which however operated entirely by amendment of the Disability Discrimination Act 1995.
29 Work and Pensions Committee, *The Equality Bill: how disability equality fits within a single Equality Act*, (Third Report, session 2008–09, HC 158–I)
30 Joint Committee on Human Rights, *Legislative Scrutiny: Equality Bill*, (Twenty sixth Report, Session 2008–09, HL 169, HC 736)
31 Written evidence from TUC (EQD0055)
32 Written evidence from Disability Law Service (EQD0051)
33 Written evidence from IPSEA (EQD0040)

47. It is this distinction between disability and the other protected characteristics which has led a number of our witnesses to question whether merging the DDA with the other protected characteristics in a single Equality Act has perhaps put disabled people at a disadvantage. The first question in our Call for Evidence asked: "Has the Equality Act 2010 achieved the aim of strengthening and harmonising disability discrimination law? What has been the effect of disability now being one of nine protected characteristics?" The Government and the EHRC thought the merger of the statutes was a positive development, but a substantially larger number of witnesses thought the merger had weakened protection for disabled people. The Discrimination Law Association felt that it was now easier for advisers to explain claims based on more than one protected characteristic because they only needed one piece of legislation, but continued: "A downside is the concern that there has been a loss of focus of resources on the protected characteristic of disability, because of its inclusion as one of nine protected characteristics in the Act. There are concerns that the unified approach can lead to disability discrimination, with its particular legal prohibitions and duties, being treated as being just like any other discrimination when it is not."[34]

48. Others of the many witnesses with similar views included the Bar Council, who wrote: "Embedding disability with the other eight protected characteristics has served to mask the differences between disability and those other characteristics … For the modest advantages of consolidation and uniformity, as may be inevitable given the greater variety of rights in play, the new regime has complicated the challenge of combating disability-focused discrimination, rendering ever more critical the need for access to those enhanced rights."[35] The Disabled Persons Transport Advisory Committee described the Equality Act as "a backward step" saying the focus on disability had been lost.[36] Inclusion Scotland, a national network of disabled people, disabled people's organisations, and social partners who share their aims, said: "If the purpose of the Equality Act 2010 was to harmonise discrimination law and make it easier to use by disabled people (and other protected groups) then it has significantly failed in its intended aim." The National Association of Deafened People thought the Act "had the effect of diluting the strength of the Disability Discrimination Act",[37] and Doug Paulley, a wheelchair user who also gave us oral evidence, believed the Act had "diluted the efficacy of disability discrimination legislation".[38] The Newcastle Society for Blind People felt disability was now subsumed, especially to race and gender.[39] Gwynneth Pedler went so far as to say that "At every turn it is obvious that the Equality Act worsened our quality of life, freedom of choice, independence and security."[40]

49. Our conclusion is that the Equality Act 2010 has led to a loss of focus on disability discrimination and a sense of a loss of rights among disabled people, who find it harder to identify with the Equality Act. The very name—

34 Written evidence from the Discrimination Law Association (EQD0129)
35 Written evidence from The Bar Council (EQD0161)
36 Written evidence from Disabled Persons Transport Advisory Committee (EQD0094)
37 Written evidence from National Association of Deafened People (EQD0061)
38 Written evidence from Doug Paulley (EQD0097)
39 Written evidence from the Newcastle Society for Blind People (EQD0100)
40 Written evidence from Gwynneth Pedler (EQD0078). Ms Pedler was previously Chair of Oxford City Access Forum, Chair of Oxfordshire Transport and Access group (OXTRAG) which also sent us written evidence (EQD0038), and Deputy Chair of Oxfordshire Unlimited, a Disabled People's Organisation (DPO). She subsequently gave us oral evidence (QQ 79–90).

equality—implies an equality of treatment which is insufficient to afford real equality for disabled people, and may even militate against it. But in our view the move towards consolidation and merger is now too deeply embedded in the law, in the supervisory bodies and in the culture for separation of the disability provisions into a separate statute to be a realistic option.

50. **We believe that combining disability with the other protected characteristics in one Act did not in practice benefit disabled people, but that separating statutory treatment of disability from the other protected characteristics would be impractical. We prefer to concentrate on improvements to the Act which will give greater prominence to disability and will increase the protection of disabled people.**

The medical and social models of disability

51. A disability was once thought of, and indeed is often still treated, as the problem which a person may suffer from and which they attempt, as far as possible, to overcome. This is the medical model of disability. But for many years disabled people have argued that disability is the result of the way a person with an impairment is treated by society; a person is disabled, not by their condition, but by the way society reacts to that condition and fails to accommodate to it. This is the social model which, the Law Society of Scotland said, means "that someone is disabled because the norm for society is non-disabled people and so services and facilities are set up to operate for them and not disabled people … if the social model was applied then the law would start from the premise that it is the norms of society that cause disadvantage".[41]

52. One consequence is the perceived difference between a 'disabled person' and a 'person with a disability'. In our Call for Evidence we used both expressions. This brought strong criticism from a number of witnesses. The Manchester Disabled Peoples Access Group wrote: "Please note that in the question, the social model of disability does not support the use of the term 'people with disabilities' as disabled people may or may not have impairments, but do not have disabilities, as they are disabled by the barriers in society."[42]

53. There is considerable inconsistency between our witnesses on this issue. A number of them (e.g. the Public Interest Research Unit)[43] hold up the United Nations Convention on the Rights of Persons with Disabilities (the UNCRPD, which we consider later in this chapter) as the prime example of the social model; and yet 'persons with disabilities' appears not just in its text but in its title. The TUC wrote: "The UNCRPD was explicitly founded in the social model of disability whereas the DDA 1995 (and its successor versions) culminating in the EA 2010 were all drafted based on the traditional medical model of disability."[44] This view that the DDA which, like all United Kingdom statutes, uses the expression 'disabled people', was drafted on the medical model was flatly contradicted in oral evidence by Lucy Scott-Moncrieff, for the Law Society, who told us how the DDA "introduced very powerfully the concept of the social construct of disability and how disability

41 Written evidence from the Law Society of Scotland (EQD0063)
42 Written evidence from Manchester Disabled People's Access Group (EQD0092). See also the written evidence from Arfon Access Group (EQD0142).
43 Written evidence from the Public Interest Research Unit (EQD0069)
44 Written evidence from the TUC (EQD0055)

is actually a function of how society is organised rather than the impairment or difference of an individual person. Therefore, as it was part of the way that society was organised, society could do something about it. That is what the DDA was all about and it was absolutely brilliant."[45]

54. The question of terminology seems to cause particular problems in the United Kingdom. The expression 'persons with disabilities' is used, not just in the UNCRPD, but in the (US) Americans with Disabilities Act, and in all relevant EU documents, including legislation. Yet in this country disabled people see this, not as a question of semantics, but as an important and sensitive issue. To us, what matters most is that society should recognise that all people are entitled to be treated with equal consideration, and that society should where possible adapt to their needs rather than be designed solely for the needs of the majority.

Different disabilities

55. Writing about 'disabled people' should not obscure the fact that there are many different types of disabilities. In addition to all the written evidence we received, we took oral evidence from those with mobility impairments, blind and visually impaired people, deaf people and those who are hard of hearing, and people with learning difficulties, and also from organisations representing them.

56. There is in our view a danger that people with mental health issues may not get the full attention they deserve, and we were particularly glad to receive written evidence from the Mental Health Foundation and from Mind, and also oral evidence from the Chief Executive of Mind.[46] We are also conscious that large numbers of people have less obvious impairments, or hidden disabilities. Action on M.E. told us that "M.E. is an invisible illness, which impacts on how it is understood by others, especially in the context of equality and discrimination."[47]

57. The British Psychological Society Working Group on Neurodiversity in Employment gave us their views on the effectiveness of the Equality Act for adults with neurodiversity "namely: dyslexia; dyspraxia; ADHD; autistic spectrum condition; dyscalculia … neurodiverse conditions, which fall under the umbrella of 'hidden disability', are distinct in their nature from other disabling conditions".[48] Autistic UK explained that

> "all autistic people are neurologically different to non-autistic people … There are other and larger groups of people who are also neurologically different to the majority of the population; those people with neurodevelopmental conditions such as dyslexia, dyspraxia, Tourette's syndrome, Attention Deficit (Hyperactivity) Disorder and other such conditions".[49]

They argued that not all autistic people are disabled, and they would have liked to see a tenth protected characteristic, so that autistic people could

45 Q 48 (Lucy Scott-Moncrief)
46 Written evidence from the Mental Health Foundation (EQD0030) and Mind (EQD0147); QQ 52–59 (Paul Farmer)
47 Written evidence from Action on M.E. (EQD0117)
48 Written evidence from the British Psychological Society (EQD0103)
49 Written evidence from Autistic UK (EQD0170)

receive the protection of the Act without having to show that they are disabled.

Definition of disability

58. Section 6(1) of the Act, which defines "disability", is simple enough: "A person (P) has a disability if (a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities." But this is only the beginning. This subsection has to be read together with the rest of section 6; with the provisions of Schedule 1; with statutory Guidance issued by the Minister; with Regulations made by the Minister; and with a substantial and increasing body of case-law interpreting all of these. The only issue arising from the law which we believe requires our consideration is that Regulation 4(1) of the Equality Act 2010 (Disability) Regulations 2010 provides that "a tendency to physical or sexual abuse" is not to be treated as an impairment for the purposes of the definition of disability. We consider this in Chapter 11.

Provisions not in force

59. Nearly six years after the Equality Act 2010 was enacted a number of its provisions are still not in force. Some of these do not deal with disability, and we say no more about them.[50] But a number are very pertinent to our inquiry.

Part 1: Socio-Economic Inequalities

60. Part 1 of the Act imposes on Ministers and public authorities a duty to have "due regard", when making strategic decisions, to the need to reduce inequalities which result from socio-economic disadvantages. This Part has no precursor in the earlier legislation, and has not been brought into force. It certainly has an impact on disability, but also on all the other protected characteristics. In fact it goes wider still, dealing as it does with inequalities which are not necessarily connected to any of the protected characteristics. It is therefore beyond our remit.

Section 14: Combined discrimination: dual characteristics

61. Many disabled people have other protected characteristics, and discrimination may be based on two or more such characteristics. Section 14 provides for this, or would do if it had been brought into force. This is particularly important for litigation, and we deal with it in Chapter 9.

Section 36(1)(d): Reasonable adjustments for common parts of premises

62. This important provision has not been brought into force. We deal with it in Chapter 5.

Part 12, Chapter 1: Transport of disabled persons by taxi

63. Most of the provisions of sections 160 to 173 of the Act are in force only in part. The most important of them, section 165 which deals with the transport by taxi of passengers in wheelchairs, is not for practical purposes in force at all. We consider these provisions in Chapter 7.

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50 Though we cannot help wondering why Part 15, dealing with Family Property, has not been brought into force, so that a husband still has the common law duty to maintain his wife.

The Equalities Red Tape Challenge

64. Developments since 2010 have not been encouraging. The Coalition Government's Red Tape Challenge looked at many thousands of regulations under different headings, and amended or revoked 3,095 of them.[51] The Equalities Red Tape Challenge placed equalities legislation under the spotlight for a three week period in May 2011. The Government's Memorandum on the Act explains this.

Box 1: The Red Tape Challenge

> Individuals and organisations were encouraged to submit their views on the Equality Act 2010 via crowd-sourcing through the Government's Red Tape Challenge website and through email submissions. Views were also invited on the Equality Act 2006 … Following this period, Ministers considered the comments received and looked at different options for removing, improving or simply maintaining elements of the legislation before finalising a package of measures.

65. It was the Red Tape Challenge which resulted in the delay in the commencement of the provisions on reasonable adjustments to common parts and on dual discrimination; the repeal of the provisions on the statutory questionnaire; the repeal of the power of tribunals to make wider recommendations; and the abolition of the EHRC's conciliation powers.[52]

66. The Government's conclusions were announced by the Home Secretary by way of a Written Ministerial Statement in May 2012, when she said: "The equalities red tape challenge package balances the need to provide important legal protection from discrimination with identifying which measures in the Equality Act 2010 are placing unnecessary or disproportionate burdens on business." [53] As we have occasion to say in a number of places in this report, the Government should have given the same consideration to measures placing an unnecessary or disproportionate burden on disabled people.

The UN Convention on the Rights of Persons with Disabilities

67. This Convention (the UNCPRD) was negotiated between 2002 and 2006. It builds on the Universal Declaration of Human Rights (1948), and follows a series of Conventions dealing with other forms of discrimination.[54] It was opened for signature on 30 March 2007 when it was signed by 82 States, including the United Kingdom.

68. Like the other UN Conventions tackling discrimination, the UNCRPD imposes a number of important obligations on the States Parties. Some are simply repetitions of earlier human rights treaties, like the right to life,[55] or to liberty and security of the person,[56] or to freedom from torture,[57] or the

51 Figures taken from the Red Tape Challenge website: http://webarchive.nationalarchives.gov.uk/20150522175321/http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/rtc-themes-2/ (accessed 9 March 2016)
52 We deal with each of these in subsequent chapters.
53 HC Deb, 15 May 2012, col 29WS
54 For example the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
55 UN Convention on the Rights of Persons with Disabilities Article 10
56 *Ibid.* Article 14
57 *Ibid.* Article 15

obligation to recognise that all persons are equal before the law.[58] But there follow provisions more specific to persons with disabilities. Article 4, though framed in terms of a general obligation on States Parties to adopt legislation and administrative measures to ensure the human rights of persons with disabilities, has a number of specific examples, including taking measures to eliminate discrimination on the basis of disability, and involving persons with disabilities in the formulation of legislation. This is supplemented by detailed provisions requiring States Parties to take appropriate measures to ensure for persons with disabilities, so far as possible, equal access to transport, communications, justice, independent living, mobility, education, health, work and employment, and equal participation in political and public life and in culture, recreation, leisure and sport.

69. A State which (like the United States) signs but does not ratify the Convention assumes no positive obligations. However the ratification of the Convention by the United Kingdom on 8 June 2009 meant that, from its entry into force a month later, the Government undertook to be bound by the Convention obligations, and would continue to be so.

70. Article 34 of the Convention set up a Committee on the Rights of Persons with Disabilities, and Article 35 requires States Parties within two years of its entry into force to submit to that Committee "a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard". Accordingly in May 2011 the Government submitted to that Committee its initial report on the implementation of the Convention in the United Kingdom. That report examines the Convention article by article, explaining in each case how the Government believes that it complies with its obligations under the Convention.

71. At the same time the Government set out its view of the legal position in its response to the report of the Joint Committee on Human Rights (JCHR) on the Right to Independent Living:

> "The Government recognises that the Convention is a legally binding instrument, and has made it clear that it is committed to its implementation. The evidence given to the Committee was intended to make the distinction that international treaties are generally not incorporated into UK domestic law. The Convention imposes legal obligations on the UK Government. The UK fulfils these obligations through existing domestic legislation, such as the Equality Act 2010, and through policy and programmes that impact upon the lives of disabled people. In this way, the rights contained in the Convention have practical effect." [59]

72. Some witnesses have suggested to us that there are individual provisions of the Convention which the Government has failed to implement. The

58 *Ibid.* Article 5

59 Joint Committee on Human Rights, *Implementation of the Right of Disabled People to Independent Living: Government Response to the Committee's Twenty–third Report of Session 2010–12* (Second Report, Session 2012–13, HL Paper 23, HC 429)

British Deaf Association[60] in its written evidence[61] maintained that the Government's treatment of British Sign Language (BSL) was in breach of its Convention obligations, and specifically Article 21 (facilitating, recognising and promoting sign languages), Article 24 (facilitating the learning of sign language and the employing of teachers qualified in sign language), and Article 30 (recognition and support of specific cultural and linguistic identity, including sign languages and deaf culture). The BDA did not accept the Government response to the UN Disability Committee to which we refer in paragraph 70 above.

73. Article 4(3) of the Convention requires States Parties, in developing and implementing legislation and policies, to "closely consult with and actively involve persons with disabilities … through their representative organizations." Autistic UK maintains that this provision "has been ignored as there has been no close consultation nor active involvement of autistic people "through their representative organizations", with no Disabled Peoples Organisations being involved in the Department of Health's Autism Programme Board."[62]

74. Reclaiming our Futures Alliance argues that the Equality Act does not fully support, in particular, Article 19 on the right to independent living, and the right of disabled people to "full inclusion and participation in the community".[63] Article 29 deals with the right of disabled persons to participate fully in political and public life, and Disability Rights UK and Disability Politics UK both argue that this should be implemented by allowing MPs to job share.[64] Finally, Unity Law believe that the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) on disabled claimants may put the Government in breach of Articles 5 and 12 (equal recognition before the law), and Article 13 (access to justice).[65]

75. We accept that these are all areas where the actions, or inaction, of the Government may lay it open to criticism and, as will appear in subsequent chapters where we address some of these issues in detail, we believe many of those criticisms are justified. But it by no means follows that the Government is in breach of its Convention obligations. The Convention sets out "broad and basic principles"[66] which impose minimum obligations, and States Parties are given a wide degree of discretion in deciding what constitutes "close" consultation, or "effective and appropriate" action, or "appropriate" measures.

76. The EHRC, with the Scottish and Northern Irish Commissions, is the Independent Mechanism (UKIM) appointed under Article 33(2) to monitor implementation of the Convention in the United Kingdom. In anticipation of

60 In the summary of its evidence, the BDA stated: "The BDA continues to press for legislative change and action by the government, especially to ratify and implement its obligations under the UNCRPD by giving legal status to BSL." (EQD0101) The Government has of course ratified the Convention; we treat this as dealing solely with implementation.

61 David Buxton, the BDA Director of Campaign and Communications, also mentioned this in oral evidence (Q 66). The same argument was put forward in written evidence by the Deaf Ex-mainstreamers Group (EQD0150). The Alliance for Inclusive Education also argued for better implementation of Article 24 (EQD0110).

62 Written evidence from Autistic UK (EQD0170)

63 Written evidence from Reclaiming our Futures Alliance (EQD0089)

64 Written evidence from Disability Rights UK (EQD0105) and Disability Politics UK (EQD0056)

65 Written evidence from Unity Law (EQD0127)

66 The words of Laws LJ, describing the UNCRPD, in *Hainsworth v MOD* [2014] EWCA Civ 763

the next examination of United Kingdom compliance with the Convention by the UN Disability Committee, which is expected later this year, in December 2014 UKIM published a report *Monitoring the Implementation of the UN Convention on the Rights of Persons with Disabilities*. This follows the format of the Government's 2011 Initial Report, looking at implementation Article by Article and suggesting questions which the UN Disability Committee might put to the Government on progress so far, and on what might be done to enhance this. By way of example, in relation to Article 19 they suggest that the UN Committee ask the Government "to explain what measures have been taken, and what impact they have had, to ensure that the reduction in central government funding to local authorities and health and social care trusts in each nation[67] does not have a negative impact on the realisation of Article 19." But nowhere in its report does UKIM suggest that there is any provision which is not adequately implemented in accordance with the requirements of the Convention.

Incorporation of the Convention into UK law

77. A few witnesses went further, and thought the Convention should be incorporated into UK law. Kate Whittaker, a solicitor and trustee on the Management Board of Disability Sheffield Centre for Independent Living, said: "If there is one recommendation that I think is most important and relevant for the Select Committee to consider, it is to incorporate the [Convention] into domestic law … it is a particular travesty that the opportunity was missed to expressly incorporate [Article 19, right to independent living] in English law via the Care Act, but the whole Convention needs to be incorporated. This is because of extensive evidence that the UK is failing to progressively realise these rights and in fact severe retrogression is happening which the existing law is powerless to prevent."[68]

78. The Law Society wrote: "Incorporation of the Convention would give an important signal about government commitment to equalities legislation, as one of its obligations on government is to take sufficient steps, including legislative steps, to realise the rights enshrined in the Convention."[69] In oral evidence Lucy Scott-Moncrieff, speaking for the Law Society, made the same point,[70] but asked Douglas Johnson, giving oral evidence at the same time on behalf of the Law Centres Network, to speak to this. He said: "At the moment we are in the situation where the United Kingdom Government have ratified the United Nations Convention. It is incorporated in some sort of way that I do not fully understand by virtue of our international treaty obligations. It would be much easier for judges on the front line who have to deal with it to know, "Yes, this is in force now by virtue of this Act"."[71]

79. We think this demonstrates some confusion. The Convention has been ratified. It is therefore binding. It is not currently incorporated in UK law. Nor is, for example, the UN Convention on the Rights of the Child. United Kingdom courts can refer to such Conventions as an aid to interpreting United Kingdom law, but if they do so, they need to heed the note of caution sounded by Laws LJ specifically in relation to the UNCRPD: "… great care needs to be taken in deploying provisions which set out broad and

67 i.e. England, Wales, Scotland and Northern Ireland.
68 Written evidence from Kate Whittaker (EQD0160)
69 Written evidence from the Law Society (EQD0163)
70 QQ 43–51
71 Q 49 (Douglas Johnson)

basic principles as determinative tools for the interpretation of a concrete measure."[72]

80. Incorporation of the Convention is a step of a wholly different order from implementation, and would result in every provision of the Convention becoming a provision of English law,[73] justiciable and enforceable in the courts of this country. A recommendation by the Committee that the Convention should be incorporated into United Kingdom law would certainly, as the Law Society said, "give an important signal about government commitment to equalities legislation". But the Government, in its evidence to the inquiry by the Joint Committee on Human Rights into the UN Convention on the Rights of the Child (UNCRC), has argued that incorporation is unnecessary.[74]

81. There is an alternative. The UNCRC, which the United Kingdom signed on 19 April 1990 and ratified on 16 December 1991, has also not been incorporated into UK law. However on 6 December 2010, in a Written Ministerial Statement in connection with the publication of the Independent Review of the Children's Commissioner, the then Children's Minister, Sarah Teather MP, gave the following commitment on behalf of the Government:

> "I can therefore make a clear commitment that the Government will give due consideration to the UNCRC articles when making new policy and legislation. In doing so, we will always consider the UN Committee on the Rights of the Child's recommendations but recognise that, like other state signatories, the UK Government and the UN committee may at times disagree on what compliance with certain articles entails."[75]

82. Towards the end of 2014 the JCHR decided to assess the progress made by the Government since it gave this commitment in December 2010. In its report, the JCHR noted that "The Government has said in the past that it will not incorporate the Convention into UK law because it believes that "the UNCRC contains a mixture of rights and aspirations that are often imprecisely defined […] [which is] why the 'must have regard to' formulation is a better approach". The JCHR said that "ideally" they would like to see the UNCRC incorporated into UK law, but concluded that if a dedicated focus on children's rights were manifest in legislation and policy across the board, "much of the debate about incorporation versus non-incorporation would become an irrelevance".[76]

83. No equivalent commitment has been given by the Government in relation to the UNCRPD. We believe that if such a commitment were given, this would be a recognition by the Government of its obligation "to take sufficient steps, including legislative steps, to realise the rights enshrined in

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72 *Hainsworth v MOD* [2014] EWCA Civ 763 at [32], cited by Andrews J in *R(Aspinall, Pepper and others, formerly including Bracking) v Secretary of State for Work and Pensions, Equality and Human Rights Commission intervening,* [2014[EWHC 4134 at [34] *(Bracking (No 2).*

73 Also of course part of the law of Wales, Scotland and Northern Ireland.

74 See the evidence cited by the Joint Committee on Human Rights, *The UK's compliance with the UN Convention on the Rights of the Child* (Eighth Report, Session 2014–15, HL Paper 144, HC 1016), paras 32 and 33. See also para 82 below, and the views of the Government cited in para 71 above.

75 HC Deb, 6 December 2010, col 7WS

76 Joint Committee on Human Rights, *The UK's compliance with the UN Convention on the Rights of the Child*, (Eighth Report, Session 2014–15, HL Paper 144, HC 1016, paras 32–34). Sarah Teather MP, who as Minister gave the commitment on behalf of the Government, was by then no longer a Minister, but was a member of the JCHR during the inquiry which led to that report.

the Convention."[77] We agree with the JCHR that this would also render the debate about incorporation an irrelevance.

84. **We call on the Government to make a commitment that it will give due consideration to the provisions of the UN Convention on the Rights of Persons with Disabilities when formulating new policy and legislation which may have an impact on disabled people.**

85. We hope the Government will give this commitment in its response to our report. We point out that this response will take the form of a Command paper laid before Parliament, and that it will therefore have the status of a commitment made to both Houses of Parliament.

The Protocol to the UNCRPD

86. The United Kingdom has also signed and ratified the Optional Protocol to the Convention. This enables the UN Disability Committee to consider communications from individuals or groups of individuals who claim to be victims of a violation by a State Party of the provisions of the Convention, and have exhausted their means of redress through the courts. The UN Disability Committee can also consider "reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention", and can then inquire into the implementation of the Convention by that State. There have been individual complaints against the UK, and in August 2014 the UK became the first country to face an inquiry by the UN Disability Committee into charges of "grave or systematic violations" of the Convention. Such inquiries are confidential. On 12 October 2015 members of the Committee met the representatives of the UN Committee and were given a broad outline of their procedure, but not details of the violations which had been alleged or of their inquiry. The UN Committee has yet to report.

European Union Law: the draft Directive on Accessibility

87. In his written evidence to us, Lord Low of Dalston said:

> "There is powerful evidence of the serious impact of barriers to everyday living faced by disabled people as a consequence of the inaccessibility of vital products such as digital television, radio and 'white goods' because they are not often designed with the needs of disabled people in mind. Clearly, the voluntary approach supported by standards has not worked. What is needed is legislation requiring a consistent approach to promoting inclusive design by manufacturers across the EU. This is a single market issue that cannot be addressed through national legislation, and therefore has to be tackled at EU level."[78]

88. There is EU legislation on the horizon. In November 2010 the EU Commission proposed a European Disability Strategy 2010–2020.[79] In the accompanying Action Plan 2010–2015,[80] under the specific objective of preventing, identifying and eliminating obstacles and barriers to accessibility, the Commission committed itself to preparing draft legislation setting out a

77 Written evidence from the Law Society (EQD0163) quoted in para 78 above.
78 Written evidence from Lord Low of Dalston (EQD0165)
79 European Disability Strategy 2010–2020: A Renewed Commitment to a Barrier-Free Europe COM(2010) 636, together with an Action Plan 2010–2015, SEC(2010) 1324
80 Initial plan to implement the European Disability Strategy 2010–2020 List of Actions 2010–2015, SEC(2010) 1324

general accessibility framework in relation to products and services. On 2 December 2015 the Commission published its proposal for a draft Directive on the accessibility requirements for products and services.[81]

89. The aim of the Directive is to ensure that products and services are accessible to persons with disabilities and those with functional impairments which may be temporary or permanent and which may be age related. The Directive will require Member States to ensure that manufacturers, importers and distributors modify products and services to ensure that disabled people are able to access products and services on an equal basis. The duty applies to the production of new products and services only. The Directive requires products to be accessible by providing an alternative to speech for communication, flexible magnification and contrast adjustment or allowing the user to control the volume. For services, the related websites should be accessible and contain information about the accessibility features of the services. Websites should be designed to allow users to access the information on the website, to operate them and to understand their content and structure.

90. The main implications for the UK are likely to be for manufacturers, as the Directive addresses the accessibility of manufactured goods i.e. products for the first time (outside the area of broadcasting). But there are also implications for service providers such as banks, as they will be required to install services such as accessible cash point machines.

91. The extent of the proposed new duty to make reasonable adjustments is defined by the nature of the product or service.[82] So, for example, in relation to air, bus, rail and waterborne passenger transport services, providing information about the way that the service operates must be accessible (which means ensuring that information is available by more than one sensory channel); associated websites must be useable for people with disabilities and functional limitations; and if the service is supported by "smart ticketing", mobile device-based services or self-service terminals (e.g. ticketing machines), then these must also be accessible.

92. The draft Directive followed consultation by the Commission in 2012–13, but in its Explanatory Memorandum the Government states that it intends to carry out its own consultation. It adds: "We understand that the Dutch Presidency [of the Council of the EU in the first half of 2016] will deal with this as a priority but they have not yet set out specific plans for doing so." There will however be no consequences for disabled people for many years. It is unlikely that the draft Directive will be adopted before 2017, and it may well have undergone substantial changes by then. Directives are not directly applicable law. Member States then have two years in which to adopt their implementing legislation,[83] and a further four years elapse before it comes into force. But when that distant day dawns, the Directive should have a positive impact on disabled people.

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81 Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services, COM(2015) 615. Confusingly, the proposal refers to the Directive as the "European Accessibility Act". "Act" is a word used in the EU Treaties, and as a generic description of EU legislation, but is not a word used to describe any form of EU legislation.

82 Annex 1

83 In the United Kingdom, probably Regulations made under section 2(2) of the European Communities Act 1972.

CHAPTER 3: OVERSIGHT AND ADVICE

Oversight within Government

93. Responsibility for the rights of disabled people under the Equality Act runs across the whole spectrum of Government. The box below sets out the main departments, but others will need to be aware of their responsibilities.

Box 2: Main government departments responsible for disability issues

- The Department for Work and Pensions, responsible for welfare and pensions. The DWP also hosts the Office for Disability Issues for which the Minister for Disabled People, a DWP Minister, is responsible;
- The Department for Education, responsible for the education of disabled people. The Secretary of State for Education, Rt Hon Nicky Morgan MP, is currently the Minister for Women and Equalities, and the Government Equalities Office, responsible for the Equality Act, now sits within her Department;
- The Department for Business, Innovation and Skills, responsible for the university education of disabled people, as well as relevant employment policies such as flexible working;
- The Department of Health, responsible for the health of disabled people and for monitoring the arrangements put in place following the closure of the Independent Living Fund, as they relate to the Care Act 2015[84];
- The Department for Transport, responsible for transport policy;
- The Ministry of Justice, responsible for courts and tribunals through which the Act is enforced;
- The Department for Communities and Local Government, responsible for planning and building regulations and for the local authorities which enforce them;
- The Department for Culture, Media and Sport, which has an important role in ensuring equal access for disabled people to sports stadia and until recently housed the Government Equalities Office;
- HM Treasury, responsible for decisions about public spending and economic policy.

Source: Information taken from www.gov.uk

94. Formal responsibility for the Equality Act 2010 sits with the Minister for Women and Equalities, supported by the Government Equalities Office (GEO). Charles Ramsden, Deputy Director of the Equality Framework Team in the GEO, described their role as "the oversight of the 2010 Act … the remaining segments of the 2006 Equality Act and, along with that, a sponsorship responsibility for the Equality and Human Rights Commission."[85]

95. The Minister for Disabled People, currently Justin Tomlinson MP, is responsible for cross-government disability issues and strategy, supported by the Office for Disability Issues (ODI). He is also responsible for disability

84 Q 4 (Pat Russell); Q 185 (Justin Tomlinson MP)
85 Q 1 (Charles M Ramsden)

benefits,[86] mental health matters, carers, appeals reform, Access to Work and the Health and Safety Executive. Both the Minister and the ODI sit within the Department for Work and Pensions.

96. Pat Russell, Head of the ODI, explained that their four main functions were to: "develop and monitor the cross-government disability strategy, currently the Fulfilling Potential strategy"; "co-ordinate the representation of UK interests" in the UN Convention on the Rights of People with Disabilities; "promote engagement with disabled people as part of routine policy and programme development and delivery"; and "promote actions and activities that remove the barriers that disabled people face." This included "challenging others to take account of the needs of disabled people and to involve them in matters that impact on them."[87]

Who is 'policing' the Act in Government?

97. The Discrimination Law Association reflected the concerns of many when they commented on: "the lack of strong commitment and leadership within central government to achieve the aims of the Equality Act 2010."[88] They felt that:

> "Neither the GEO nor the past or present Minister for Women and Equalities seems to want to take on the role of monitoring or influencing in any way the decisions by various other Ministers when policies which are likely to have adverse impact on disabled people are being considered or adopted."[89]

98. Rt Hon Nicky Morgan MP explained that: "At the Government Equalities Office, we give advice to departments about the application of the duty and the Equality Act. We run training exercises for staff in other departments. We circulate guidance on the duty. But we do not, as the Government Equalities Office, take decisions for other departments."[90]

99. Ms Russell emphasised the enabling nature of the ODI, making it clear that despite the aim of "challenging" others[91], they were "not a policing forum" and had "no powers to require other departments to do things."[92] Responding to a question on how the Equality Act fits with current government policy, Ms Russell responded that: "All government departments in developing policy have to take account of the public sector equality duty, and the GEO has published guidance to ensure that departments understand what that is. It is not the role of the Office for Disability Issues to police that."[93] When pressed further on what the ODI would do if they felt that the Government was moving in the direction of a breach of the Act she repeated that: "In terms of individual policy areas, we very much expect individual departments to ensure that they meet the public sector equality duty."[94]

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86 Listed on www.gov.uk as: Disability Living Allowance, Personal Independence Payment and Attendance Allowance
87 Q 1 (Pat Russell)
88 Written evidence from Discrimination Law Association (EQD0129). Such concerns were echoed by: Aspire (EQD0025), Douglas Johnson Q 49, Lucy Scott-Moncrieff Q 51, Paul Breckell Q 106, and Equity (EQD0064)
89 Written evidence from Discrimination Law Association (EQD0129)
90 Q 185 (Nicky Morgan MP)
91 Q 1 (Pat Russell)
92 Q 4 (Pat Russell)
93 Q 3 (Pat Russell)
94 *Ibid.*

Developing effective cross government policy and strategy

100. The Government told us that "the Minister for Disabled People meets regularly with Ministerial colleagues and chairs the Interdepartmental Ministerial Group on Disability to ensure progress of the disability strategy Fulfilling Potential across government."[95] The Inter-Ministerial Group was set up in 2014, "has 14 government departments represented on it and met three times last year."[96] It is intended to be "a vehicle by which Ministers can get together and identify areas of common interest where there is a need to get better co-ordination across government."[97]

101. Neil Crowther, an independent expert who had worked on disability policy at the EHRC and its predecessor, the Disability Rights Commission, explained that the ODI was "specifically conceived to achieve cumulative impact. The idea was to coordinate across government policy so that it was more effective; to tie different strands of activity together; to create some kind of coherence." He was concerned that "that coherence has gone. We do not have that level of direction."[98] Aspire, a national charity providing practical help to people with spinal cord injury, similarly felt that it was "difficult to find evidence of cross departmental work that focuses on the wider needs of disabled people." This had not always been the case; in the past there had been greater transparency, with "ambitious targets" and the involvement of disabled people.[99]

102. Despite the formal structures set out above, the lack of coherence and coordination became apparent when we questioned the Government on the closure of the Independent Living Fund, a decision that did not sit well with the objectives of the Fulfilling Potential strategy. Ms Russell distanced the ODI and the strategy from the fund, telling us that it was now "under the remit of the Department of Health, which will have responsibility for monitoring how local authorities are delivering against their new requirements."[100] However, the Minister for Disabled People was unable to identify a Minister and department with overarching decision-making power for the fund, despite being asked this five times.[101] It appeared that responsibility had in fact been dispersed, with no single point of accountability. This perhaps explains why, when we asked the Department of Health how they had worked with the ODI on the transfer of responsibility for the Independent Living Fund, the official appeared unaware of concerns.[102] This was despite reporting positive relationships with both the GEO and the ODI and telling us that the ODI kept "tabs" on their progress.[103]

103. When the Secretary of State was asked for information on the involvement of the Government Equalities Office in the decisions around the closure, she confirmed that "neither GEO officials nor its legal advisers were involved in any decisions or legal advice to the DWP on either judicial review" of the decision to close the fund. Instead, she highlighted the role of the GEO in offering, on request, "advice to other Departments on good practice

95 Written evidence from HM Government through the Department for Education (EQD0121)
96 Q 5 (Pat Russell)
97 *Ibid.*
98 Q 164 (Neil Crowther)
99 Written evidence from Aspire (EQD0025)
100 Q 4 (Pat Russell)
101 Q 185 (Justin Tomlinson MP)
102 Q 127 (Flora Goldhill)
103 *Ibid.*

compliance with the public sector equality duty".[104] Had they been more involved it might not have helped. Charles Ramsden told us that they had been focussed on attempts to "scale back what was seen as overcompliance."[105] He acknowledged, however, that "how the courts have interpreted compliance with the duty has sometimes been rather different and much more substantive"[106] and the Secretary of State told us the guidance was now being updated.[107]

104. The "confusing and ineffective"[108] arrangements affecting both the GEO and the ODI seem to be one reason for this state of affairs. In July 2015 Charles Ramsden described the arrangements for the GEO:

> "We report to the Secretary of State for Education, Nicky Morgan, who is the senior Minister for Women and Equalities, but our junior Minister, Caroline Dinenage, has joint responsibilities in Education and the Ministry of Justice. Our spokesman in the Upper House is Baroness Williams, who is actually a Communities and Local Government Minister. This is a pattern with which the Government Equalities Office has become fairly familiar over the years—a number of splits of responsibility."[109]

105. Mr Ramsden felt that this helped them with "the mainstreaming of equalities consciousness in Whitehall".[110] The Equality and Human Rights Commission, for which the GEO is responsible, felt differently. Baroness O'Neill of Bengarve, the Chair of the EHRC, told us of the effect of such changes:

> "One member of staff told me she thought that, if you counted the switches … it added up to eight switches. Each switch is very costly, in terms of building relationships, achieving continuity and educating a new group of colleagues in the Civil Service."[111]

106. For the ODI, its ability to fulfil its cross-government role was put into question by its location in the Department for Work and Pensions. Paul Breckell, speaking for the Disability Charities Consortium, explained that:

> "Of course the department needs to sit somewhere, but it sits within DWP. The cross-government role is so, so important for the ODI, because disabled people live their lives and this is not confined to the disabled person as an employee, or an Access to Work claimant, or somebody who is receiving benefits or social security. It is much broader than that … it takes one small slip of rhetoric to move from there to talking about disabled people as benefit claimants."[112]

107. Witnesses also wondered where the Minister's loyalties lay when spending cuts were proposed. Reflecting on campaigning on the cap on Access to Work, Paul Breckell told us that the Disability Charities Consortium felt

104 Supplementary written evidence from Rt Hon Nicky Morgan MP (EQD0199)
105 Q 9 (Charles M Ramsden)
106 *Ibid.*
107 Supplementary written evidence from Rt Hon Nicky Morgan MP (EQD0199)
108 Written evidence from RNIB (EQD0164)
109 Q 5 (Charles M Ramsden)
110 *Ibid.*
111 Q 41 (Baroness O'Neill of Bengarve)
112 Q 111 (Paul Breckell). These concerns were shared by Aspire (EQD0025) and the RNIB (EQD0164) among others.

that "at the end of the day the loyalty in that case was to deliver to the DWP budget." In contrast, the ODI had supported Action on Hearing Loss to raise concerns with the Department of Health about cuts to hearing aid provision, albeit with little success.[113]

108. A further concern was that in 2015 the Government had downgraded the role of Minister for Disabled People from Minister of State to Parliamentary under Secretary of State, the most junior Ministerial position. This risked undermining the influence of the cross-government role[114] and "seemed to suggest to the disability movement that disability issues were less important."[115] The solution advocated by the British Deaf Association was to relocate the role into the Cabinet Office.[116]

109. The position of the GEO has, at least to a degree, been resolved. The Government informed us on 27 July 2015 that the Office was being "brought fully into the Department for Education."[117] The Minister responsible for policy on the Equality Act is now also responsible for the relevant budget and we agree this should "create more coherence in the GEO's ways of working".[118]

110. **Locating both the Minister for Women and Equalities and the Government Equalities Office within the same department is welcome, and we hope that the Government will keep in mind the need for coherence and stability if and when any future changes are made to the location of the equalities portfolio.**

111. The problems facing the Minister for Disabled People and the Office for Disability Issues are not so straightforward. We have sympathy for the concerns of witnesses regarding the location of the ODI in the Department for Work and Pensions, though it does not seem to us that any other single department is better suited. The risk of split loyalties is a real one, especially given the downgrading of the status of the Ministerial role.

112. **The ability of the Minister to influence policy and practice across Government is more important than the location of the Minister's portfolio. We agree that this has been diminished by the change in status of the Minister for Disabled People, and greatly regret the decision of the Government to downgrade the role in this manner. The effectiveness of the role is also affected by the lack of power to challenge policy that may impact adversely on disabled people.**

113. **The Cabinet's Social Justice Committee, whose terms of reference are "To consider issues relating to poverty, equality and social justice", has 16 members, but the Minister for Disabled People is not one of them. He should be made a member.**

114. **The Committee should ensure that government departments do not take any major initiatives which will or may affect disabled people without first obtaining the Committee's agreement.**

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113 Q 109 (Paul Breckell)
114 Q 111 (Paul Breckell)
115 Written evidence from British Deaf Association (EQD0101)
116 *Ibid.*
117 Supplementary written evidence from the GEO (EQD0014)
118 *Ibid.*

115. **The Minister responsible for Children and Families has the rank of Minister of State, and until 2015 so did the Minister responsible for cross-government disability policy and strategy. The Minister for Disabled People should have the rank of Minister of State restored, to emphasise the importance of the post.**

The Equality and Human Rights Commission

The Disability Rights Commission

116. British anti-discrimination law has traditionally provided for national bodies charged with oversight of the relevant enactments and with powers to take strategic action. As far back as 1975 the Sex Discrimination Act established the Equal Opportunities Commission (EOC) which was followed not long after by the Commission for Racial Equality (CRE), set up under the Race Relations Act 1976. Barbara Cohen of the Discrimination Law Association, quoting from the White Paper that led to the 1976 Race Relations Act, told us that the CRE and EOC had been "given quite substantial enforcement powers" with the expectation "that the bulk of the enforcement of those laws would fall onto those bodies rather than onto individual complainants."[119]

117. As explained in Chapter 2, the Disability Discrimination Act 1995 did not initially follow suit. Instead it established an advisory National Disability Council. It was not until 2000 that the Disability Rights Commission (DRC) was created.[120]

118. The duties of the Commissions were set out in their founding statutes, and evolved with each new Commission: the Race Relations Act gave the CRE a good relations brief[121] in addition to the equality and non-discrimination duties of the EOC[122]. The Disability Rights Commission was required to work towards the elimination of discrimination against and harassment of disabled persons; to promote the equalisation of opportunities for disabled persons; and to take such steps as it considered appropriate with a view to encouraging good practice in the treatment of disabled persons.[123]

119. The powers of the Commissions were also similar, and are reflected to a large extent in the powers of the Equality and Human Rights Commission (EHRC) set out in Box 3 below. Powers covered statutory and non-statutory guidance, enforcement, research and educational activities and the ability to support such activities undertaken by others. The DRC, but not the EOC or the CRE, had the power to make arrangements for the provision of conciliation services and could enter into statutory agreements in lieu of enforcement.

120. Witnesses showed considerable affection for the DRC. The Business Disability Forum told us that "the Disability Rights Commission made a lasting impact on how the law was understood by disabled people, employers and service providers through the provision of guidance and through cases it supported and took in the Courts."[124] On the Disability Equality Duty, it had been "very energetic" and "produced some fantastically good guidance

119 Q 46 (Barbara Cohen)
120 By the Disability Rights Commission Act 1999
121 Race Relations Act 1976, Part VII
122 Sex Discrimination Act 1975, Part VI
123 Disability Rights Commission Act 1999
124 Written evidence from the Business Disability Forum (EQD0093)

and codes."[125] The TUC felt that the helpline had been a particular success: "When the DRC was in existence, its helpline was well advertised and received over 100,000 calls a year."[126] This view was shared by Andrew Lee of People First (Self Advocacy), who told us that one reason for this was that "when the DRC was running it … they went into every town and city and spoke to self-advocacy organisations and told them about it. They had a card and it said, "Here's the telephone number: if you have a problem, use it"."[127] Engagement with disability organisations was reported to have been good[128] and George Selvanera, speaking for the Business Disability Forum, felt that the DRC "really did make a lasting impact." [129]

121. The DRC operated across England, Wales and Scotland and set itself the goal of "a society where all disabled people can participate fully as equal citizens".[130] It ceased to exist in 2007, when the EHRC came into being. The new Commission clearly had a lot to live up to when it took over this work. We explore further below how effective it has been in meeting this challenge.

Role, duties and powers of the Equality and Human Rights Commission

122. The duties and powers of the Equality and Human Rights Commission are set out in the Equality Act 2006, and include specific duties and powers in respect of human rights, which have been used by the Commission as part of its work on disability.[131] The Commission's duties on equality are to:

- Promote understanding of the importance of and encourage good practice in relation to equality and diversity;
- Promote equality of opportunity;
- Promote awareness and understanding of rights under the Equality Act;
- Enforce the Equality Act; and
- Work towards the elimination of unlawful discrimination and unlawful harassment.[132]

123. The 2006 Act specifies in section 8(3) that when "promoting equality of opportunity between disabled persons and others, the Commission may, in particular, promote the favourable treatment of disabled persons."[133] The enforcement powers of the Commission, set out in the box below, are extensive and flow from these duties, building on those held by the EOC, CRE and DRC.

125 Q 48 (Barbara Cohen)
126 Written evidence from the TUC (EQD0055)
127 Q 63 (Andrew Lee)
128 Q 24 (Fazilet Hadi)
129 Q 75 (George Selvanera)
130 Disability Rights Commission, *Evaluating the Impact of the Disability Rights Commission: Final Report*, September 2007, p 9
131 Q 27 (Rebecca Hilsenrath)
132 Equality Act 2006, section 8
133 Equality Act 2006, section 8(3)

Box 3: Powers of the Equality and Human Rights Commission

The Equality Act 2006 gives the Commission powers to:

- Conduct investigations into compliance with the Equality Act 2010. Where a person is found to have committed an unlawful act it may issue a notice to this effect and may require the preparation of an action plan to avoid the act being repeated or continued.
- Conduct assessments of compliance with the public sector equality duty and issue a compliance notice where it finds a breach. This may require the public authority concerned to provide a written proposal on steps to ensure compliance.
- Enter into binding agreements with organisations who commit to take, or refrain from taking, specified action. This could be used as an alternative to taking other formal enforcement action.
- Support individual complainants to bring a case (including financial support), bring judicial review proceedings in its own name and intervene in cases brought by others.
- Enforce the ban on pre-employment health questionnaires: the Commission has , under section 60 of the Equality Act 2010, the sole power to enforce this provision
- Conduct inquiries leading to recommendations of potentially wide application.
- Provide information, advice, guidance, education and training, and undertake research.
- Issue Codes of Practice (subject to the approval of the Secretary of State).

124. The EHRC was "extensively reviewed" by the Government between 2010 and 2015 "to ensure that its work focused properly on its key regulatory and enforcement functions."[134] A number of changes resulted from that review. Probably the most significant was the removal of the EHRC helpline and its replacement with the Equality Advisory Support Service. It also lost its power to arrange for the provision of conciliation services, a loss that we consider in Chapter 10, and had funding for its grants programme removed, as well its duties in respect of groups.[135]

Effectiveness

125. Given the breadth of its mandate, some witnesses questioned whether the EHRC was able to make disability a priority. Jonathon Fogerty, a tetraplegic wheelchair user who provided written and oral evidence on his experience of seeking to enforce the Act, felt that "disability sits quite far down on the agenda of the EHRC" as "there is an enormous amount of work for that

134 Written evidence from HM Government through the Department for Education (EQD0121). The most relevant review document was: HM Government, *Building a fairer Britain: Reform of the Equality and Human Rights Commission, response to the consultation*, May 2012 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85308/EHRC-consultation-response.pdf [accessed 11 March 2016]

135 Legislative changes to the Equality Act 2006 were made by the Enterprise and Regulatory Reform Act 2013. That Act repealed the EHRC's powers and duties to promote good relations between and within group and its power to make arrangements to provide conciliation. The EHRC helpline and grants programme were removed by a transfer of the relevant budgets to the Government Equalities Office.

Commission to do."[136] To some the Commission appeared to have taken a positive decision to distance itself from disability groups:

> "When the Equality and Human Rights Commission first started I think it was very concerned, which I understand, to reach out to the wider British public and not to be overly involved with the disability groups, the BME groups, the lesbian and gay groups or whatever. They did not want to be seen as a lobby group; they wanted to be there for the whole of society. To my mind, I think the pendulum has swung a bit too far. For a while we felt that there were no real mechanisms for involvement."[137]

126. The Business Disability Forum said: "The EHRC … is not an organisation to which either disabled people or employers or service providers routinely turn for help and advice."[138] Barbara Cohen felt that the EHRC was failing in its "fundamental educational role". She recalled "the excellent poster campaign of the Disability Rights Commission that helped all of us to understand how disability is part of our society." She felt that "we miss the strong influence which a single statutory equality body should be providing."[139]

127. Doug Paulley, a wheelchair user with experience of bringing disability discrimination claims, told us:

> "I was quite surprised the other day to see the extent of the various powers that the Equality and Human Rights Commission could use; to be frank, I wish it used them a lot more. I think it is important that where it sees something significant affecting disabled people, it should jump in and start to do some work on that instead of waiting until disabled people, who struggle in so many ways and who are facing increasing adversity in this country, to bring up the issue."[140]

Similar concerns of a "perceived lack of enforcement capability" were expressed by George Selvanera and Paul Farmer, Chief Executive of Mind.[141]

128. The EHRC did not, however, appear to be overlooking disability in its enforcement action. Rebecca Hilsenrath, then Chief Legal Officer at the EHRC, told us that "in the past year, out of full funding that we have given under Section 28 [support to individual litigants], six out of 16 cases were disabled-focused. In terms of part funding that we gave under that provision, it was five out of seven. We made 18 interventions, of which eight were disability-focused and nine were relevant to disability and other protected characteristics."[142] Tracey Kerr, the Head of Legal Advisers at the GEO, argued that "in the important pieces of litigation that we have seen, it is very common for the EHRC to intervene."[143] Lesley Cox of Ofsted praised the EHRC's enforcement record as "impressive, particularly in terms of the number of court interventions."[144]

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136 Q 100 (Jonathan Fogerty)
137 Q 24 (Liz Sayce). Liz Sayce is Chief Executive of Disability Rights UK
138 Written evidence from Business Disability Forum (EQD0093)
139 Q 50 (Barbara Cohen)
140 Q 100 (Doug Paulley)
141 Q 75 (George Selvanera); Q 56 (Paul Farmer)
142 Q 33 (Rebecca Hilsenrath)
143 Q 11 (Tracey Kerr)
144 Q 122 (Lesley Cox)

129. The EHRC received a similarly positive assessment of its work in the area of health. Flora Goldhill, the Director for Children, Families and Communities at the Department of Health told us that the Department "has a long relationship with the EHRC."[145] John Holden, the Director of Policy, Partnerships and Innovation at NHS England, regularly met with the relevant EHRC policy director and NHS England and the EHRC had "codesigned and codelivered a series of workshops for NHS England and CCGs around the country … talking about the public sector equality duty and the EHRC's expectations."[146] Sally Warren, of the Care Quality Commission,[147] felt they had a "very good relationship with the EHRC" and were members of the its Regulators, Inspectorates and Ombudsmen Forum—"a very useful forum for discussing issues with other regulators and keeping up to date."[148]

130. Perhaps one explanation for the, quite stark, difference between these two sets of views is the tendency of the EHRC to intervene in cases on appeal, rather than support individual litigants at first instance—leading some to criticise the Commission for becoming involved at too late a stage. Doug Paulley told us that he was "very grateful and lucky" that the EHRC was supporting a case that he was bringing, but that:

> "The case would not have happened, however—they would not have had the opportunity [to support the case on appeal]—unless campaigning lawyers and I had gone out on a limb first to bring this case. Not many people would be in a position to do that."[149]

131. In response to such criticisms, Rebecca Hilsenrath, by then the Chief Executive, wrote to us to explain why the EHRC had chosen this approach. We explore their reasons in Chapter 9. Rebecca Hilsenrath also told us that the Commission was actively seeking strategic first instance cases in goods and services and in education "because the paucity of discrimination cases outside the employment sphere means that a successful judgment in a first instance case is likely to have wider impact, even without setting a precedent."[150] Identifying such cases had, however, become more challenging since the removal of the helpline, [151] an issue we return to below.

132. Another explanation may be a tendency, shown in the evidence of Baroness O'Neill and Lord Holmes of Richmond[152], to describe their role as a "strategic regulator"[153] in terms of what they are not—"it is the courts that enforce, not the Commission"[154]; "we are not a front-line organisation"[155];"we are not a campaigning organisation"[156]—rather than what they are. This contrasts with the DRC approach of practical action towards the clear goal of "a society where all disabled people can participate fully as equal citizens"[157]. It seems that the EHRC are having some difficulty in defining an enforcement role

145 Q 127 (Flora Goldhill)
146 Q 127 (John Holden)
147 Deputy Chief Inspector of Adult Social Care
148 Q 127 (Sally Warren)
149 Q 100 (Doug Paulley)
150 Supplementary written evidence from the EHRC (EQD0200)
151 *Ibid.*
152 The EHRC Disability Commissioner.
153 A term used by the EHRC and the Government, but not any other of our witnesses.
154 Q 34 (Baroness O'Neill of Bengarve)
155 Q 35 (Rebecca Hilsenrath)
156 Q 42 (Lord Holmes of Richmond)
157 See para 121

appropriate to their overall strategy; what Sally Warren called the difficult balance "between where they collaborate, encourage and cajole and where, as regulators, they hit people over the head."[158]

Resources

133. The budget of the EHRC has dropped by 75% since 2010, first as a result of the 2010 comprehensive spending review, then following a comprehensive budget review in 2012. Their core funding for 2015–16 is £17.1m, "with access to additional discretionary programme funding" of £6.5m.[159] In 2014–15 the Commission employed 201 staff.[160] This contrasts with the DRC, which "in 2006/07 had a budget of £21.2m and 205 staff."[161] The EHRC argued that:

> "If budget reductions had been applied to the DRC in the same proportion as they have been to the EHRC, its budget this year would have been around £5m (assuming zero inflation for a rough and ready comparison). The EHRC's remit is far wider than that of DRC, our powers are different, and our budget is significantly lower relative to the scope of our remit."[162]

134. Nevertheless, when asked about the budget reductions Baroness O'Neill told us that: "Our budget is adequate for us to fulfil our functions".[163] Other witnesses were not so sure. Action on Hearing Loss and Scope had found that it was now "difficult for the EHRC to work with individual charities due to their limited budget".[164] Andrew Lee told us that "there are a lot of dedicated individuals within the Equality and Human Rights Commission but because of the cuts the Commission no longer has the capacity to meet its legal responsibilities."[165] Dr Peter Purton of the TUC echoed the sentiments of many witnesses when he said that:

> "We are very strong supporters of the existence of an EHRC. We think what has happened is that progressive reductions in the resources provided to that organisation … have made it much less effective in terms of the support it is able to give to any of the protected characteristics, but disability particularly, because the DRC was such an excellent example of a really effective equality commission".[166]

135. Crucially, the loss of resources had undermined the ability of the EHRC to have the kind of strategic impact at which it aimed. Neil Crowther, an independent consultant and former director of disability and human rights programmes at the EHRC, told us: "where the Disability Rights Commission was making strategic choices on what to do about disability rights, the Equality and Human Rights Commission has to choose whether to do anything about disability rights"[167]. This led him to conclude that the

158 Q 128 (Sally Warren)
159 Supplementary written evidence from the EHRC (EQD0145)
160 Equality and Human Rights Commission, *Annual Reports and Accounts 2014–15* (July 2015) p 66: http://www.equalityhumanrights.com/sites/default/files/publication_pdf/2904124_EHRC_AnnualReport2015_acc.pdf [accessed 2 March 2016]
161 Supplementary written evidence from the EHRC (EQD0145)
162 *Ibid.*
163 Q 28 (Baroness O'Neill of Bengarve)
164 Written evidence from Action on Hearing Loss (EQD0128) and Scope (EQD0158)
165 Q 64 (Andrew Lee)
166 Q 75 (Dr Peter Purton)
167 Q 158 (Neil Crowther)

Commission had "become more of a bit player than a strategic leader on disability rights issues."[168]

136. We support the EHRC's intention to be strategic, in the sense of taking action that has the greatest impact, but our evidence suggests that disabled people and their organisations are not seeing or feeling the effects of that strategy. The EHRC does have a wider set of duties than the DRC, but it also has a stronger set of powers at its disposal and we believe that these could be used to much greater effect than is currently the case.

137. **We recommend that the EHRC engage with disabled people and their organisations to co-produce a disability specific action plan covering the full range of the Commission's powers. The Disability Committee's involvement will be fundamental to the development and implementation of the plan, but it must belong to the whole organisation.** Many of the recommendations we make in this report, in respect of the helpline, conciliation powers, Codes of Practice, guidance, and the Disability Committee, would give the EHRC additional tools to understand and respond to the expectations of disabled people through its strategic approach.

The Disability Committee

138. The Equality Act 2006 provided for a statutory Disability Committee, viewed by disability organisations as "a really important component in the governance of the EHRC to ensure that disability was not lost in this."[169] Government officials viewed the Committee as giving the Commission "a slight but perceptible leaning towards disability interests".[170]

139. The 2006 Act provided that the EHRC was treated as having delegated to the Committee certain of its duties and powers as they relate to disability matters. Commenting on its role in enforcement matters,[171] Lord Holmes of Richmond, the current Disability Commissioner and Chair of the Disability Committee, explained that: "No decision can be made to turn down a case on disability, or even concerning disability being an element of that case, without the Disability Committee's view being taken on board."[172]

140. The 2006 Act also provided for an independent review to consider the length of time the Committee should continue as a statutory body. This was conducted in 2013, and found that: "The Committee has some substantial achievements to its credit and has been involved or led some of the best-thought of work of the Commission in its first five years."[173] However, it also found that it had not been "hard-wired in" to the Commission and it had not been as effective as it might have been "as a result of a lack of strategic leadership."[174] The report recommended that the Committee should not continue in statutory form beyond March 2017, and made a number of recommendations to improve its impact. As a result the Government put

168 Q 158 (Neil Crowther)
169 Q 59 (Paul Farmer)
170 Q 2 (Charles M Ramsden)
171 Equality Act 2006, Schedule 1, Part 5
172 Q 34 (Lord Holmes of Richmond)
173 Agnes Fletcher, Independent Reviewer, *Independent Review of the Equality and Human Rights Commission's Statutory Disability Committee*, June 2013, p. 53: http://www.equalityhumanrights.com/sites/default/files/publication_pdf/independent_review_report_final_for_web.pdf [accessed 2 March 2016]
174 *Ibid.*, p 53

forward, and Parliament approved, the Equality Act 2006 (Dissolution of the Disability Committee) Order 2014 and the Disability Committee will cease to be a statutory committee from 31 March 2017.

141. Far from supporting the removal of the statutory basis for the Disability Committee, witnesses argued that it "needs to be more prominent in order to have greater public recognition. This would allow disabled people to view the Committee as a strategic enabler and enforcer of equality, in the same way they could with the Disability Rights Commission."[175] Neil Crowther, however, cautioned that placing the Disability Committee back onto a statutory footing would not in itself be sufficient to address the concerns of disabled people as "whatever its statutory remit, its operating context is the commission as a whole."[176]

142. It appears that the EHRC intends to continue the work of the Committee. The Committee has three dedicated staff posts, reserved for its operation and work programme, and an annual budget of £110,000. Lord Holmes was clear that "My intention and the intention of my fellow board members is that the change … from statutory to nonstatutory, should not impact the work of the committee, or indeed the work of the commission, as pertains to the disability strand."[177] He also told us of steps that he had taken to improve the functioning of the Committee:

> "It was clear when I got involved that we needed to be far more engaged with stakeholders, to be on the ground, to go to them to get all of that information and have a twoway debate and dialogue. … We had a new engagement strategy, whereby now I am taking the committee around the country. Each year, we will visit Scotland, Wales and another English region, rather than previously, before my time, when we just had meetings based in London."[178]

143. We regret the removal of the statutory underpinning of the Disability Committee, which gave a clear status and priority to the work of the Commission on disability, but do not believe it is realistic to reverse this. The Equality and Human Rights Commission has the power under Schedule 1 to the Equality Act 2006 to establish decision making committees, and it is open to the Commission to use this to re-establish the Disability Committee as a decision-making body. Doing so would enable the Committee to build on the work begun by Lord Holmes to increase its visibility and influence.

144. **We recommend that, from 1 April 2017, the Equality and Human Rights Commission use its powers under Schedule 1 to the Equality Act 2006 to re-establish its Disability Committee as a decision making body, in a way that as closely as possible mirrors the current statutory functions and powers of the Disability Committee. We welcome the fact that the EHRC continues to provide dedicated staff support for the Committee, in the face of staffing reductions, and recommend that it ring-fence specific resources for the Committee.**

175 Written evidence from Disability Rights UK (EQD0105)
176 Q 158 (Neil Crowther)
177 Q 40 (Lord Holmes of Richmond)
178 Q 39 (Lord Holmes of Richmond)

The Equality Advisory and Support Service

145. The Government decided to remove the helpline function from the EHRC following a 2011 review into information advice and support on equality and human rights issues. The Secretary of State explained:

> "The EHRC's helpline was criticised. The Disability Alliance described its performance in 2010 as "hugely disappointing". When we reviewed it in 2011 … it was costing [£28] a call which was more than double the cost of any benchmarked comparator. … It also was not integrated into some of the EHRC's key regulatory functions and it had no systematic data on customer satisfaction."[179]

146. This decision was much regretted by our witnesses. The TUC described it as "a major blow in terms of providing an ability for early resolution of … problems."[180] The Oxford Transport and Access Group and the National Aids Trust both complained that the outsourcing of the helpline had led to a "side-lining"[181] or "disconnect"[182] between the EHRC and disabled people, and the National Deaf Children's Society felt that it had led to the EHRC no longer being able to pick up on trends in cases, preventing it from responding effectively.[183]

147. Baroness O'Neill agreed that this was a real problem, telling us that: "We have had considerable difficulty in accessing sufficient information about the inquiries coming into [the EASS]." In written evidence, the EHRC further explained that "the current service is not yielding the sort of strategic case referrals to the Commission that we would expect to see. While we have been working with Government and the EASS to improve the information flow from EASS to the Commission, this has been with limited success."[184]

148. The Equality Advisory and Support Service (EASS) was commissioned in 2012 to replace the EHRC helpline. The contract to provide the service was awarded to Sitel, working with Disability Rights UK, the Law Centres Federation, Voiceability (an independent advocacy organisation), the British Institute for Human Rights, and the Royal Association of Deaf People.[185] It offers advice directly to individuals and accepts referrals "from organisations who are unable to provide 'in depth help and support' for their local service users."[186] The Government told us that it received approximately 2,200 calls per month on the Equality Act and that: "Disability was the most frequently quoted protected characteristic for calls connected to the 2010 Act, representing over 60% of all enquiries."[187]

149. The Oxford Transport and Access Group characterised the EASS as "a phone line manned by inexperienced staff via a completely independent agent"[188],

179 Q 191 (Nicky Morgan MP)
180 Q 74 (Dr Peter Purton)
181 Written evidence from OXTRAG (EQD0038)
182 National Aids Trust (EQD0136)
183 National Deaf Children's Society (EQD0053)
184 Q 42 (Baroness O'Neill of Bengarve)
185 Press Release from the Government Equalities Office, *New Equality Advisory and Support Service is launched*, 15 November 2012: https://www.gov.uk/government/news/new-equality-advisory-and-support-service-is-launched [accessed 2 March 2016]
186 Equality Advisory and Support Service, 'About Us': https://www.equalityadvisoryservice.com/app/about [accessed 29 February 2016]
187 Written evidence from HM Government through the Department for Education (EQD0121)
188 Written evidence from Oxford Transport and Access Group (EQD0038)

and Andrew Lee complained that the helpline had been closed down and the replacement "stuck on the website."[189] More common, however, was a feeling that its profile was low and that the advice and support it could provide too limited.[190] Douglas Johnson, speaking for the Law Centres Network, told us that:

> "The helpline does not provide advice … it will very explicitly steer clear of giving any sort of view on the merits of whether someone has a discrimination complaint that is valid or not, or what they should do about it, which is the bit that people really need. So it is quite ineffective."[191]

150. Michele Brenton illustrated the limitations of this approach when describing her experience of seeking help to challenge discrimination by the university attended by her husband:

> "I found the Equality Advisory and Support Service were very helpful up to a point. They could signpost me to the relevant areas of law so I could direct the university's attention accordingly but even when they wrote a letter on our behalf to the university it had no force other than to give our complaints and concerns some validation. It had no effect on changing a culture of discrimination and adversarial behaviour."[192]

151. The Secretary of State defended the Government's decision to remove the helpline from the EHRC, telling us that she "would dispute the contention of people who have called it [the EASS] a failure" and that she believed it was now "providing the EHRC with a substantial volume of information" including "351 referrals between October 2014 and September this year, up from 79 in the previous 12 months."[193]

152. Given that the EASS receives approximately 2,200 calls per month, it seems surprising that the Minister viewed an average of 29 referrals per month, barely 1.3% of the total calls received, as substantial—although admittedly this is a significant increase on the 6.6 referrals per month seen the year before. This may account for why the EHRC did not agree with the Minister's assessment.

153. We also asked the Secretary of State for a comparison between the cost of the EASS and the helpline provided by the EHRC. She was initially unable to provide this, but later wrote with a comparison of £10 per call for the EASS, and £28 for the EHRC helpline. She told us that: "Costs are calculated on a per-case basis, covering everything from an initial inquiry through to final action on behalf of the customer." This comparison was on the basis of "the call element of a case", which the Government felt "most closely replicates the service EHRC provided".[194] We wonder if this is, in practice, the most suitable comparison, given the range of supports that witnesses felt had been lost as a result of the outsourcing of the helpline.

189 Q 63 (Andrew Lee)
190 Written evidence from Thurrock Coalition (EQD0068)
191 Q 50 (Douglas Johnson)
192 Written evidence from Michele Brenton (EQD0096)
193 Q 191 (Nicky Morgan MP)
194 Supplementary written evidence from Nicky Morgan MP (EQD0199)

Box 4: The Disability Rights Commission helpline in action

"The DRC were very helpful, telling me how to communicate and (later) communicating direct with the service provider. They further offered recourse to the (then) Disability Conciliation Service; then when the service provider refused, they made a referral to see if the DRC's lawyers wished to take it on as a piece of strategic litigation. When their lawyers refused, the DRC sent me a copy of their publication "Goods and Services: How do I make a claim? A guide to taking a Part 3 DDA case to the County Court". I litigated this case myself and lost, but in the process I learned a considerable amount about my rights under the Act and how to enforce them as a litigant in person."

Source: Supplementary written evidence from Doug Paulley (EQD0176)

154. Creating an entirely new service, divorced in practice if not in intent, from the work of the national enforcement body has failed to provide disabled people with the level of service they require. Bringing the service back in-house to the EHRC would enable it to embed the helpline into its role as a strategic regulator and make it more responsive to the needs of disabled people. It would also provide the helpline with access to expert legal advice, a restored conciliation service, and, where appropriate, assistance in bringing forward litigation. Far from costing more, such an approach would remove possible duplication and confusion between the roles of the EASS and the EHRC and might ultimately produce savings.

155. **We recommend that the Equality Advisory and Support Service be returned to the Equality and Human Rights Commission, either in-house or as the contract managers for a tendered-out service.**

156. **We further recommend that, once the Equality and Human Rights Commission is again responsible for the services provided by the EASS, it should develop a service specification and strategy to realise fully the advantages of in-house provision, including face-to-face legal advice, the restored conciliation service and the link to its enforcement function.**

Codes of Practice

157. The EHRC has a power to issue codes of practice in connection with any matter in the Equality Act 2010.[195] It consults widely before doing so, and submits the Code in draft to the Minister who then lays it before Parliament. It is then approved by Order. Such Codes do not themselves impose legal obligations, but the Equality Act 2006 provides that they "shall be admissible in evidence in criminal or civil proceedings, and shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant."[196]

158. On 6 April 2011 the Minister for Women and Equalities made an Order[197] giving statutory force to three Equality Act Codes: the Services Code,[198] the

195 Under section 14(6) of the Equality Act 2006
196 Equality Act 2006, section 15(4)
197 The Equality Act 2010 Codes of Practice (Services, Public Functions and Associations, Employment, and Equal Pay) Order 2011, (SI 2011/857)
198 Covering Part 3 of the Act, which makes it unlawful to discriminate against, harass or victimise a person when providing a service.

Employment Code[199] and the Equal Pay Code.[200] Some witnesses felt that the Codes were too generic: Fazilet Hadi of the Royal National Institute of Blind People (RNIB) said "it is all very rational and it is all very tidy, but does it really make people emotionally own the issue and the need for change?"[201] We hope that our recommendation, in Chapter 5, for a new Code of Practice on Reasonable Adjustments will meet some of these concerns. The Law Centres Network felt that, while in need of updating, the Codes provided "practical and useful guidance". [202] The Disability Law Service found the Employment Code particularly useful "as it sets out a range of possible adjustments."[203]

159. The EHRC drafted codes of practice on the Public Sector Equality Duty (PSED), and for Schools and the Further and Higher Education duties, with the intention that they become statutory Codes. The Government, however, decided not to lay the draft Codes before Parliament. This was much criticised by witnesses, especially in respect of the Code on the Public Sector Equality Duty. The Discrimination Law Association felt that this could be one of the reasons for the PSED not being as effective as it could be: "A statutory code could have assisted public authorities and disabled people to have a fuller understanding of what compliance entails." This could have helped avoid "the stress and expense of litigation."[204] Equity, a trade union representing performers and creative workers, felt that the lack of such a Code "gives the message that the duty is a less important part of the law."[205]

160. These concerns were echoed by the Law Centres Network, Lord Low of Dalston, and Mind, all of whom argued for detailed guidance, with Douglas Johnson describing the draft Codes prepared by the EHRC as "very helpful, very clear and very practical."[206] In education, both Anna Kennedy, an autism charity, and IPSEA were concerned that "schools do not have their own Code of Practice. A draft Code was issued but the progress of this work was truncated … in our opinion this was a mistake."[207]

161. The EHRC decided to produce the original text of those draft Codes as technical guidance which, despite the lack of a statutory basis, they believed "will still provide a formal, authoritative, and comprehensive legal interpretation of the PSED and education sections of the Act."[208] The

199 Covering provisions which make it unlawful to discriminate against, harass or victimise a person at work or in employment services, and that restrict the circumstances in which potential employees can be asked questions about disability or health.

200 Covering provisions of the Act relating to equal pay between men and women; pregnancy and maternity pay; and provisions making it unlawful for an employment contract to prevent an employee disclosing his or her pay. It is therefore not directly relevant to disability.

201 Q 16 (Fazilet Hadi)

202 Written evidence from Law Centres Network (EQD0135). A need for greater clarity on what constitutes a reasonable adjustment tended to be the basis of calls to update these Codes and we deal with that in Chapter 5.

203 Written evidence from the Disability Law Service (EQD0051)

204 Written evidence from Discrimination Law Association (EQD0129)

205 Written evidence from Equity (EQD0064)

206 Written evidence from Law Centres Network (EQD0135), Lord Low of Dalston (EQD0165), Mind (EQD0147) and Q 103 (Douglas Johnson)

207 Written evidence from Anna Kennedy (EQD0023) and IPSEA (EQD0040)

208 Equality and Human Rights Commission, *'Equality Act guidance, codes of practice and technical guidance'*: http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/equality-act-guidance-codes-practice-and-technical-guidance [accessed 11 March 2016]

Discrimination Law Association told us that this was "very useful, but both qualitatively different and lacking the influence of a statutory code."[209]

162. On 21 July 2015 Rebecca Hilsenrath, then the Chief Legal Officer of the EHRC and now its Chief Executive, told us: "We had quite a serious degree of correspondence with [the Government] last year, and in fact we have written to them very recently since the general election. Within the last month or so, we wrote asking if they would reconsider. We are waiting to hear back from them."[210] Eight months later, and despite two reminders, the EHRC had still not received a reply from the Government.

163. We do not know what prompted the Government to agree to give the guidance drafted by the EHRC the status of a Code of Practice in three cases, but to decline to do so in three other cases. The Secretary of State told us that it was "simply because they were just too long and were going to increase burdens."[211] This is unconvincing and ignores the burdens on disabled people resulting from the lack of such statutory guidance. We applaud the aim of brevity but evidence shows support for the level of detail in those already drafted by the EHRC. Codes of Practice, alongside shorter targeted guidance, reduce regulatory burdens by adding clarity and information. Given this, the Government's decision seems to us perverse.

164. **We recommend that the Government lay before Parliament as Codes of Practice the technical guidance on the Public Sector Equality Duty, Schools, and Further and Higher Education that have already been drafted and extensively consulted on by the Equality and Human Rights Commission.**

209 Written evidence from Discrimination Law Association (EQD0129)
210 Q 31 (Rebecca Hilsenrath)
211 Q 177 (Nicky Morgan MP)

CHAPTER 4: COMMUNICATION AND LANGUAGE

Accessible communications and information

165. The Office for Disability Issues has published "guidance on accessible communications, including alternative formats, aimed at government communicators".[212] Nevertheless, a lack of accessible communication and information, including from the Government, was highlighted as a problem by many witnesses.[213] This included a lack of EasyRead information[214] and a failure to provide British Sign Language interpreters.[215] Problems were also reported with the accessibility of websites: the Business Disability Forum had undertaken research of "online recruitment processes amongst FTSE100 companies" where they found that:

> "Only 1 in 4 companies had website accessibility features that were straightforward for an applicant to find and only 3 in 10 companies had spell-check functions integrated into their online application processes—an important feature which enables candidates with disabilities such as dyslexia, visual impairments and learning difficulties to demonstrate on an equal basis their capabilities".[216]

166. The growing use of the internet had also increased the cost of living for many disabled people:

> "Twenty-seven per cent of disabled people have never used the internet. In a world where we are used to getting the best deals for things online and where increasingly the way we interact with goods and services and providers is online, it is very difficult for disabled people to access those types of things if they do not have that access."[217]

167. The DWP itself was a focus for concerns about accessible information. Fazilet Hadi told us that the RNIB had "recently asked blind and partially sighted people what experience they had of getting accessible information from the Department for Work and Pensions, and without a lot of trouble we had around 50 cases and are now up to about 90."[218] Inclusion London, a user-led organisation promoting equality for disabled people in London, reported Access to Work letters "sent out in hard copy not electronically to blind people".[219] Newcastle Society for Blind People told us of difficulties and delays in obtaining accessible versions of factsheets on the Care Act when the website neither contained accessible versions, nor had a facility to request them.[220] Lord Low of Dalston felt that:

> "One of the biggest "culprits" in this regard is government. Some sectors have embraced the requirement [to provide accessible information as a reasonable adjustment], particularly banking and energy (although

212 Written evidence from the Government Equalities Office (EQD0113)
213 Written evidence from The Salvation Army (EQD0112), Pembrokeshire People First (EQD0057), RNIB (EQD0164), Scottish Disability Equality Forum (EQD0167), Sense (EQD0122), Thomas Pocklington Trust (EQD0099), Action on Hearing Loss (EQD0128), British Deaf Association (EQD0101) and People First (Self Advocacy) (EQD0134)
214 Written evidence from People First (Self Advocacy) (EQD0134)
215 Written evidence from British Deaf Association (EQD0101)
216 Written evidence from the Business Disability Forum (EQD0093)
217 Q 54 (Elliot Dunster)
218 Q 18 (Fazilet Hadi)
219 Written evidence from Inclusion London (EQD0075)
220 Written evidence from Newcastle Society for Blind People (EQD0100)

> not without issues), but the public sector has not been as proactive and the recent commitments from DWP and NHS have only come about as a result of threats of litigation. Local Authorities are proving to be particularly problematic as there are so many of them offering such a wide range of services."[221]

He argued that "as a spur to best practice … the Office for Disability Issues (ODI) should issue instructions to all public authorities on the provision of accessible information, and this should be included in any statutory code of practice produced by the EHRC."[222]

168. There were examples of good practice. The Association of Convenience Stores included accessibility of information in its best practice guide on 'Welcoming Disabled Customers'[223] and NHS England had recently adopted a "mandatory Accessible Information Standard".[224] This standard was welcomed by a number of witnesses,[225] albeit with the reservation that it was yet to show that it will produce results.[226] A similar concern appears to have been borne out in Wales: RNIB Wales told us that the "Welsh Government launched the All Wales Standards for Accessible Communication in December 2013 and almost two years later, the standards are not being met."[227]

169. We expect the Code of Practice on Reasonable Adjustments, which we recommend in Chapter 5, to help improve the accessibility of information and communications by providing greater clarity on what the law requires. However, practice is just as important, and the Government has a responsibility to lead by example. The Office for Disability Issues has already provided guidance to Government departments; it is time for a more proactive approach.

170. **All government departments, local authorities and official bodies should review their means of communication with the public, especially online, from the point of view of people with a variety of disabilities. The Office for Disability Issues should coordinate this and lead by example.**

British Sign Language

171. We received forceful written evidence from, among others, the British Deaf Association (BDA) regarding the status to be accorded to British Sign language (BSL) and the adjustments they would like to see made to facilitate communication in BSL.[228] This evidence was amplified by oral evidence from Terry Riley, the Chair of the BDA, and David Buxton, the Director of Campaigns and Communications.[229] That evidence was, as we said in Chapter 1, given in BSL.

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221 Written evidence from Lord Low of Dalston (EQD0165)
222 *Ibid.*
223 Q 73 (James Lowman)
224 Written evidence from Action on Hearing Loss (EQD0128); Q 129 (John Holden)
225 Written evidence from Newcastle Society for Blind People (EQD0100), Signature (EQD0066), Thomas Pocklington Trust (EQD0099) and University of Leeds (EQD0125)
226 Written evidence from Lord Low of Dalston (EQD0165)
227 Written evidence from RNIB (EQD0164)
228 Written evidence from the British Deaf Association (EQD0101)
229 QQ 66–71

172. It seemed to us that BSL was a very efficient tool enabling our witnesses to communicate with us, and vice versa. But this is not the way they would wish us to see it. In its written evidence the BDA deplored "the continued policy perception of BSL as a communication tool for disabled people despite extensive academic research to the contrary that BSL is [one of the UK's] indigenous minority languages."[230] Mr Riley explained:

> "We have research that proves that sign language, BSL, is a language. It has a grammar; it has a syntax. It is not just waving your hands. There are regional dialects as well, in the same way as the other indigenous languages have: Welsh, Scottish Gaelic and Cornish. We are the fourth language. There are more BSL users than there are Gaelic speakers. To us, sign language gives us empowerment; it gives us pride in our language; and it gives us access."[231]

And later Mr Riley said: "BSL is sometimes seen as an inferior sub-language. As I said before, it is a language."[232]

A BSL Act

173. The BDA in their written evidence called for a "BSL Act", and said:

> "BSL is a threatened language and without a BSL Act there is a real risk of losing the cultural and linguistic diversity it represents due to the very real threat posed by interrupted intergenerational transmission."[233]

The Deaf Ex-Mainstreamers Group supported them.[234]

174. Mr Riley explained: "A BSL Act would change the status of BSL, so that it would become one of the British indigenous languages. It would put deaf people on the same basis as disabled people, who are protected by the Equality Act. We would be protected by a BSL Act. It would also encourage the Government to promote and facilitate the use of BSL, such as we see here today. An Act would hopefully lead to the appointment of a commissioner, who would make it their responsibility to ensure there was proper public provision, working together with the BSL community."[235]

175. It was not made very clear to us what a BSL Act would say, or what it would achieve. The Scottish Parliament passed last year the British Sign Language (Scotland) Act 2015. This provides that Scottish ministers are under a duty to "promote, and facilitate the promotion of, the use and understanding of the language known as British Sign Language" (section 1). It further provides that both Scottish Ministers and listed public authorities must produce action plans for the use of BSL. These public authorities include local authorities, but also such bodies as Health Boards, the Scottish Courts and Tribunals Service, the Scottish Commission for Human Rights, and the Scottish Parliament itself through its Corporate Body.

176. The Scottish Parliament briefing on the Bill explained that "the Bill does not go as far as imposing an explicit statutory requirement on authorities to provide British Sign Language (BSL) interpreters or translation services, nor

230 Written evidence from the British Deaf Association (EQD0101)
231 Q 66 (Terry Riley)
232 Q 67 (Terry Riley)
233 Written evidence from the British Deaf Association (EQD0101)
234 Written evidence from Deaf Ex-Mainstreamers Group (EQD0150)
235 Q 67 (Terry Riley)

does it require listed authorities to deliver specific services to BSL users or those wishing to learn BSL."[236] In this, and other, respects it follows the Gaelic Language (Scotland) Act 2005. The cost estimate of some £6 million in the first session only considered "the likely financial implications for writing and reviewing plans, rather than changing the delivery of services as a result of any proposals in BSL plans."[237] The Scottish Government Memorandum on the BSL Bill noted: "Lessons from the implementation of the Gaelic Language (Scotland) Act 2005 suggest significant additional resource implications … At present there are 34 public authorities with published Gaelic Language Plans. This is a far lower number than is proposed through the BSL Bill, where approximately 116 authorities are required to produce BSL plans."[238]

177. We wonder whether this very significant cost might not be better employed in directly training more BSL interpreters and increasing their availability where they are needed because, as Mr Buxton explained, "it is important we have more people learning BSL to a higher level … because, without access to education, deaf children will not achieve the potential they could achieve. Ultimately, the investment they put back into society later in life is not as much as it could be. In Scotland, we are talking about 92% of teachers who did not have fluent British Sign Language when teaching deaf children."[239]

The need for communication in BSL

178. The proponents of BSL object to it being called a communication tool, even though communication is the primary purpose of any language. Whether regarded as communication tool or minority language, it is clear from the evidence of the BDA itself, and the examples they gave in their written evidence, that there is a considerable unmet need for BSL interpreters in health services, in education and in employment.[240]

179. Action on Hearing Loss said in their written evidence:

> "We are a partner in a campaign to raise awareness amongst … BSL users about their rights in relation to accessing healthcare. The campaign … explains people's rights in relation to getting an interpreter for health appointments, how to ensure they have a properly qualified interpreter and how to complain if they do not get a good service. Around two-thirds of BSL users (68%) have asked for a sign language interpreter to be booked for a GP appointment but did not get one and almost half of those who do find the quality of interpretation isn't good enough. Research by SignHealth suggests that people who are deaf are more likely to have undiagnosed high blood pressure and receive less effective treatment due to confusion about their medication and health information being provided in written English rather than BSL."[241]

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236 The Scottish Parliament, *British Sign Language (Scotland) Bill SPICe Briefing* (January 2015): http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_15-05_British_Sign_Language_Scotland_Bill.pdf [accessed 2 March 2016]

237 *Ibid.*

238 The Scottish Parliament, *British Sign Language Bill: Government Memorandum* (December 2014): http://www.scottish.parliament.uk/S4_EducationandCultureCommittee/BSL%20Bill/BSLBill_SGmemo_Dec2014.pdf [accessed 2 March 2016]

239 Q 67 (David Buxton)

240 In January 2016 DWP issued a Call for Evidence in support of the Minister for Disabled People's *Market review of British Sign Language and communications provision for people who are deaf or have hearing loss*. One of its purposes is to assess the scale of the demand for communications services.

241 Written evidence from Action on Hearing Loss (EQD0128)

Our conclusion

180. In view of the very real unmet need exposed, we think it important to stress that our task is to scrutinise the impact on disabled people of the Equality Act 2010, and to recommend how it might be improved. It is not for us to decide on the status of BSL as a language, or to suggest where it should come in the hierarchy of Welsh, Cornish and Gaelic. It is however very much our concern to see whether the law, and society in applying the law, is making adequate provision for the significant proportion of deaf people and people with severe hearing difficulties for whom BSL is often the only means of communication. We wholeheartedly support the provision of additional resources for training more BSL interpreters so that they can facilitate the health, education and employment needs of such people, including children.

181. Mr Buxton told us that "the Equality Act does not cover BSL users" and "does not cover BSL use".[242] Our conclusion is otherwise. The Equality Act covers BSL users because it imposes on service providers a legal obligation to make reasonable adjustments in communicating with them; and where BSL is their first or only language, those adjustments will very often be the provision of BSL interpreters. Without the Equality Act and, before it, the Disability Discrimination Act, there would be no such legal obligation.

Promoting awareness and understanding of the Equality Act, rights and remedies

Awareness or understanding?

182. Awareness amongst disabled people of their rights was mixed. People still often referred to the 'DDA', the Disability Discrimination Act, rather than the Equality Act,[243] and the Bar Council believed that many disabled people "have no idea that the obstacles they come across on a daily basis, whether to do with accessibility, charges or a whole range of matters in their local communities, are simply unlawful."[244] Muscular Dystrophy UK told us that "there have been some improvements in relation to awareness" but nevertheless felt that "a considerable amount still needs to be done on improving attitudes of staff providing services and increasing training and knowledge of how to treat disabled people equally and fairly."[245] This view was echoed by the Law Centres Network, who felt that "the difficulty is not so much awareness of the existence of anti-discrimination legislation but of what service providers and employers must to do avoid it" and a "lack of awareness amongst individuals about what they can do if they feel they have suffered discrimination".[246]

183. Awareness is not the same thing as understanding. We discuss in Chapter 2 the lack of understanding of how the Act applies to disabled people. This has practical consequences. George Selvanera of the Business Disability Forum felt that, although campaigns such as Disability Confident were a good start, in that they "can raise awareness of the value of recruiting people with disabilities", "much more" was required:

242 Q 66 (David Buxton)
243 Q 106 (Paul Breckell)
244 Q 46 (Rachel Crasnow QC)
245 Written evidence from Muscular Dystrophy UK (EQD0052)
246 Written evidence from Law Centres Network (EQD0135)

> "One of the challenges of thinking about how you make a recruitment process accessible is that it has to involve the IT department, because that is often an online recruitment process. It means involving the premises department, so that the building is physically accessible. It means involving the learning and development department, so that there is adequate training and line managers are equipped to know what to do. It cuts across the entire organisation."[247]

Regaining the independent living narrative

184. Understanding had been undermined by a move "away from the idea that for disabled people to have real independent living, some support is often needed", and by a tendency to focus on those considered to be "vulnerable".[248] Liz Sayce, Chief Executive of Disability Rights UK, argued that "People with very significant impairments can and do do all sorts of things with their lives with the right support, but there may be people who may not be classified as vulnerable but for whom a few adjustments make all the difference and they can successfully raise a family, go to work or go to college or whatever." She felt that "stronger and clearer cross-government leadership" was needed, for example by using equality to "frame" the commitment to halve the disability employment gap.[249]

185. A linked concern of many witnesses was what was described as "pervasive negative messaging" around disability.[250] Breakthrough UK, a Manchester based disabled people's organisation, said that:

> "Whilst our clients have often not heard about the positive rights they have under the Act, they have often absorbed many negative things about what it means to be a disabled person in our society … Often people will be highly reluctant to identify as a disabled person because they see it as negative."[251]

186. Action for M.E. cited a respondent to their survey who felt that negative treatment and public attitudes had been "perpetuated by irresponsible journalism focusing on benefit scroungers rather than genuinely ill people. It is harder to get welfare, harder to travel and a definite increase in hostility and lack of understanding towards people with a disability."[252] Action on Hearing Loss felt that the Government was responsible for negative messages "about disabled people and the Equality Act more generally",[253] a view echoed by concerns surrounding the inclusion of equalities in the Red Tape Challenge discussed in paragraphs 64–66.

Public awareness and education

187. Many witnesses called for a public awareness campaign to improve understanding of the Equality Act. The Challenging Behaviour Foundation felt that this would help to see that "policy is fully embraced and translated in practice."[254] Diverse Cymru, focussing on the reasonable adjustment duty, went into some detail on how they wanted a campaign "supported by Plain

247 Q 74 (George Selvanera)
248 Q 14 (Liz Sayce)
249 Q 17 (Liz Sayce)
250 Written evidence from Breakthrough UK (EQD0065)
251 *Ibid.*
252 Written evidence from Action for M.E. (EQD0117)
253 Written evidence from Action on Hearing Loss (EQD0128)
254 Written evidence from the Challenging Behaviour Foundation (EQD0153)

English and alternative format information distributed through disabled people's organisations, equality organisations, community groups, County Voluntary Councils, Community Centres, and Council offices."[255] Changing Faces, a charity working with and for people with disfigurements, advocated a similarly multi-agency approach,[256] while Down's Syndrome Association wanted to see an "Equality Act Awareness week/day spearheaded by the Equality and Human Rights Commission in collaboration with the Charity sector". They wanted to see this include training provided by the EHRC to enable charities "to provide practical information and support, and promote awareness of the Act and its practical application."[257] Action on Hearing Loss also saw a key role for the Equality and Human Rights Commission, alongside the Government.[258]

188. The Law Centres Network gave the example of a programme started by the Disability Rights Commission, but discontinued with the loss of the EHRC grants function. The DRC had been "proactive in recognising by 2005 that, although the DDA had been passed ten years previously and was being reasonably well used in the employment tribunals, it had been used very little in the county court to enforce goods and services cases".[259] This was due to a lack of awareness of the rights of disabled people and the difficulty individuals faced in bringing cases "because of the cost, formality and unfamiliarity of the court system, coupled with the almost complete lack of available legal advice."[260] The DRC responded by funding the Law Centres Network to "provide and co-ordinate a service across 15 Law Centres. These provided a pioneering service of awareness-raising in their local communities, coupled with a casework service for those disabled people who wanted to enforce their rights once they became aware of them."[261] Douglas Johnson told us that:

> "When I started at the law centre, 50% of the time, my job was going out talking to community groups, disability organisations, and to whoever else, about their rights under the Disability Discrimination Act and therefore what they could do once they realised that they were suffering things that were unlawful. The other half of the time was spent in helping them in practice deal with those. In some cases, those would end up in court claims."[262]

189. Andrew Lee, of People First (Self Advocacy), told us how such an approach could be particularly important for people with learning disabilities, for whom "Ninety-nine per cent of information … is passed on by word of mouth.":

> "One thing that might be really good would be, let us say, that a test case is taken and, whatever the decision, whether it is good or bad, there is a requirement for an organisation to have the staffing capacity to go and talk to people with learning difficulties by word of mouth, to bring people together in their local community, to talk to them about the case

255 Written evidence from Diverse Cymru (EQD0109)
256 Written evidence from Changing Faces (EQD0131)
257 Written evidence from Down's Syndrome Association (EQD0115)
258 Written evidence from Action on Hearing Loss (EQD0128)
259 Written evidence from Law Centres Network (EQD0135)
260 *Ibid.*
261 *Ibid.*
262 Q 46 (Douglas Johnson)

> and how it might benefit them. It is two-way because people can say, 'This is my experience. Am I protected and can I get support from the law? Can I do something about it? How do I get support to take a test case?'"[263]

190. We have already explored the concerns disabled people have about the effectiveness of the Equality and Human Rights Commission. We believe that a proactive educational campaign, conducted in partnership with disabled people's organisations, would provide the EHRC with an opportunity to rebuild trust—in keeping with its role as a strategic regulator and supported by the return of its responsibility for direct advice to individuals and organisations.

191. **We recommend that the Equality and Human Rights Commission work with local and national disabled people's organisations to undertake a wide programme of educational activity, raising awareness of the rights of disabled people and the responsibilities of those subject to duties under the Equality Act.**

192. **If this public awareness and education campaign should require the EHRC to access its discretionary programme funds, we expect the Government to fully support it in doing so.**

263 Q 63 (Andrew Lee)

CHAPTER 5: REASONABLE ADJUSTMENT

193. Sections 20 and 21 of the Equality Act 2010 require those to whom the provisions apply, including employers, service providers, educational institutions, transport providers, and sports bodies, to "take such steps as it is reasonable to have to take" to avoid putting disabled people at "a substantial disadvantage"[264]. Failure to comply with this duty is a form of discrimination. The duty is not offered on other grounds and reflects the social model of disability which requires changes to the environment, as well as attitudinal and behavioural changes, if disabled people are to participate in society on an equal basis and with dignity and respect. The precise duty has evolved over time and varies across the different aspects of life with which the Act is concerned, as explained in the box below.

Box 5: The Reasonable Adjustment Duty

In general, the duty to make reasonable adjustments requires the taking of "such steps as it is reasonable to have to take" to avoid a disabled person being put at a "substantial disadvantage" by any of the following:

(a) A "provision, criterion or practice". This could be, for example, adjusting a uniform or dress policy to accommodate different impairment types.

(b) A physical feature. This could include, for example, steps, parking areas, signage, floor covering, furniture and toilets or washing facilities.

(c) Lack of an auxiliary aid or service. Examples here are providing a specialist piece of equipment, a videophone, or a sign language interpreter.

Adjustments under a) or c) could include making information available in an accessible format. It is not permissible to pass the costs of making an adjustment on to the disabled person.[265]

The duty in employment

Employers are required to meet all three limbs of the duty in respect of disabled job applicants and employees. The duty is 'reactive': it requires there to be an identified applicant or employee, and for the employer to know, or be reasonably expected to know, that that person is disabled, and that they are likely to be at the substantial disadvantage without the adjustment.

The duty also applies in respect of some other types of work, such as contract work and barristers.

The duty in respect of premises

Similarly, a controller of let premises or of premises to let is required to react to the needs of tenants, but not to anticipate them. So they may be required to provide a rent agreement in an alternative format such as large print, but are not required to plan for this themselves. Nor do the controllers of premises have to make adjustments to physical features, other than certain auxiliary aids that might otherwise be classified as physical features—such as an entry phone system.

264 Equality Act 2010, section 20

265 The exception to this is under the un-commenced provisions on the common parts of leasehold premises, where the landlord can require the leaseholder or tenant to pay the costs of the adjustment. We consider this below at paras 235–244.

The duty in the provision of services and public functions

Those providing services and exercising public functions are bound by all three requirements. The key difference with employers is that in the case of services and public functions the duty is 'anticipatory': it is owed to "disabled persons generally" and requires service providers and those exercising public functions to proactively remove barriers that could put disabled people at a substantial disadvantage without waiting for a disabled person to seek to use their services first.

The duty in schools and further and higher education

The duty on schools and in further and higher education is again 'anticipatory'. Schools, universities, and higher and further education institutions are required not only to respond to the needs of disabled pupils, but to anticipate access needs of disabled people. Schools are not subject to the requirement to adjust physical features, but they must prepare accessibility strategies and plans to address disadvantages associated with physical features. The only exception is in respect of qualifications and competence standards, which are not subject to the duty to make reasonable adjustments, but instead may need to be justified if they are indirectly discriminatory.

194. The Government has recognised the reasonable adjustment duty as the "cornerstone"[266] of disability discrimination law and "a consistent key element of disability discrimination … legislation for the past 20 years." This led it to believe that "the concept of reasonable adjustment is by now well known to employers and service providers alike."[267] The concept has evolved through a large body of case law. This was viewed by Tracey Kerr, the Head of Legal Advisers at the Government Equalities Office, as to be expected "given that it is an objective test and it is usually for the courts to set that out."[268] Indeed, she argued that:

> "We have found that as the case law has developed it becomes clearer and clearer for people to understand what a reasonable adjustment might be in certain cases. So we think that that has been a successful development of case law."[269]

195. We agree with the Government on the importance of the reasonable adjustment provisions of the Equality Act. They are a clear example of the need for what may appear to be more favourable treatment to achieve equality for disabled people, and a practical expression of the social model of disability. The Public Interest Research Unit (PIRU) cited research showing that adjustments had "enabled organisations to recruit and retain valuable staff and helped disabled individuals to work and progress in their careers" They argued that such provision "could substantially reduce the disability employment gap."[270]

196. It is worrying, therefore, that evidence of problems in obtaining this right have emanated from almost every part of society. We heard of problems in

266 HL Deb, 21 November 2014, col 662 . Baroness Jolly speaking for the Government during the second reading debate on the Equality Act 2010 (Amendment) Bill, moved by Lord Blencathra.
267 Written evidence from HM Government through the Department for Education (EQD0121)
268 Q 2 (Tracey Kerr)
269 Q 2 (Tracey Kerr)
270 Written evidence from the Public Research Interest Unit (EQD0069)

gaining reasonable adjustments from employers[271] and education providers,[272] on buses and trains, and in taxis[273], shops, restaurants and hospitals.[274] We were told of sports grounds[275] and other entertainment venues[276] that failed to make necessary adjustments.[277] Problems were reported in the criminal and civil justice systems[278] and with bodies charged with enabling disabled people to access their rights.[279]

197. We heard of employers responding to requests for reasonable adjustment by making an employee redundant[280] and of "disabled people being offered a termination package as a first response to a grievance being raised in respect of a reasonable adjustment."[281] We were told that pubs and restaurants sometimes used their disabled toilets as storage facilities,[282] while cleanliness was often a problem at sports venues[283]. Attitude is Everything, a charity working to improve disabled people's access to live music, told us that festival organisers and those responsible for entertainment venues lacked "creative thinking" on adjustments.[284] Andrew and Michele Brenton described the practical and attitudinal barriers they faced when seeking to secure reasonable adjustments at a university.[285] The British Deaf Association cited the refusal of schools to provide BSL interpreters for deaf parents.[286] Mencap told us of how the Confidential Inquiry into Premature Deaths of People with Learning Disabilities had found many examples of where reasonable adjustments should have been made and were not, "thereby disadvantaging people with learning disabilities at crucial stages of the care pathway".[287] The RNIB and many others cited problems with receiving information in inaccessible formats, a concern we considered in more detail in Chapter 4.[288] Fazilet Hadi said:

> "This is not rocket science. They should have been doing it since 1999 and they are still not doing it. We have inaccessible websites, inaccessible streetscapes, inaccessible services, and government really should be

271 Written evidence from Inclusion Scotland (EQD0082), Jane Young (EQD0009), Equality and Human Rights Commission (EQD0083), Action for M.E (EQD0117) and Equity (EQD0064)
272 Written evidence from Jeanine Blamires (EQD0171), Alliance for Inclusive Education (EQD0110), Inclusion London (EQD0075), Michele Brenton (EQD0096), Andrew Brenton (EQD0095), Action for M.E. (EQD0117), Anthony Hall (EQD0046) and Muscular Dystrophy UK (EQD0052)
273 Written evidence from Disabled Persons Transport Advisory Committee (EQD0094); Hertfordshire Equality Council (EQD0120)
274 Written evidence from Mencap (EQD0157), Catherine Scarlett (EQD0004) and Scottish Disability Equality Forum (EQD0167)
275 See para 245 regarding stadia
276 Written evidence from Attitude is Everything (EQD0146)
277 We later discuss the specific case of sports stadia. This is not to say that other entertainment venues are not equally important, and what we say there can be of equal application to other large venues.
278 Written evidence from Inclusion London (EQD0075) and the British Deaf Association (EQD0101)
279 Supplementary written evidence from Doug Paulley (EQD0176) and David and Jeanine Blamires (EQD0197)
280 Written evidence from Discrimination Law Association (EQD0129)
281 *Ibid.*
282 Q 151 (Marie-Claire Frankie) and written evidence from Newcastle Society for Blind People (EQD0100)
283 Written evidence from Level Playing Field (EQD0141)
284 Written evidence from Attitude is Everything (EQD0146)
285 Written evidence from Andrew Brenton (EQD0095) and Michele Brenton (EQD0096)
286 Q 66 (David Buxton)
287 Written evidence from Mencap (EQD0157)
288 Written evidence from RNIB (EQD0164), Discrimination Law Association (EQD0129), the British Deaf Association (EQD0101), Manchester Disabled Peoples Access Group (EQD00092), Newcastle Society for Blind People (EQD0100), People First (Self Advocacy) (EQD0134), Portsmouth Disability Forum (EQD0084) and Sense (EQD0122)

leading the way. They should be role models for this stuff and they are not. There are countless examples of government departments that still send me bits of paper that I cannot read."[289]

198. Some told us that they were often not recognised as disabled, or as having a right to reasonable adjustments. This was particularly so for those with mental health problems,[290] dementia[291] and for people living with HIV/AIDS.[292]

199. This is not to say that good practice did not exist. The Business Disability Forum and Disability Rights UK both spoke about employers who made adjustments as a matter of good business practice.[293] The Association of Convenience Stores had produced guidance to help small shops be more welcoming to disabled customers,[294] and Barclays Bank told us of the work they were doing in employment and service provision.[295] Action for M.E. cited an example of the Open University making reasonable adjustments.[296] Essex County Council told us about their work on inclusive communications that had won a number of national awards, including an Employee Network for Equality and Inclusion award.[297] Such practice shows what can be done with understanding and determination.

Awareness and understanding of the duty to make reasonable adjustments

200. The evidence presented two main reasons why the duty often did not appear to be respected in practice. Firstly, there were barriers to individual disabled people enforcing their rights under the duty, with some questioning the appropriateness of this approach. The Discrimination Law Association were not alone in arguing that: "The need for a private law action to determine the responsibilities of a bus company to make adjustments so that the bus can be used by disabled passengers seems to us to be wholly undesirable and to place an unreasonable burden upon the individual."[298] We consider these and other issues related to enforcement in Chapters 9 and 10.

201. Secondly, witness after witness told us that, contrary to the Government's view, the provisions were neither well known nor well understood.[299]

Awareness of the anticipatory duty

202. As set out above, service providers, those exercising public functions and schools, are subject to what is known as the 'anticipatory duty'. Awareness, although not necessarily understanding, of the reactive reasonable adjustment

289 Q 17 (Fazilet Hadi)
290 Written evidence from Mind (EQD0147)
291 Written evidence from the Mental Health Foundation (EQD0030)
292 Written evidence from the National Aids Trust (EQD0136)
293 Written evidence from the Business Disability Forum (EQD0093) and Disability Rights UK (EQD0105)
294 Q 78 (James Lowman)
295 QQ 72–78 (Mark McLane)
296 Written evidence from Action for M.E. (EQD0117)
297 Written evidence from Essex County Council (EQD0039)
298 Written evidence from the Discrimination Law Association (EQD0129)
299 Written evidence from the Equality and Human Rights Commission (EQD0083), the Discrimination Law Association (EQD0129), Autistic UK (EQD0170), University of Leeds (EQD0125), Diverse Cymru (EQD0109), Manchester Disabled Peoples Access Group (EQD0092), Transport for All (EQD0116), Natalya Dell (EQD0005), National Association of Disabled Staff Networks (EQD0156), Disability Law Service (EQD0051) and Royal College of Nursing (EQD0059)

duty in employment appeared to be better than awareness of this anticipatory duty. The Equality and Human Rights Commission told us that:

> "The duty could be better understood; a quarter of disability discrimination-related enquiries to the Equality Advisory and Support Service … concern failures to make reasonable adjustments in employment and service-provision. Many of the problems we come across occur because of poor understanding of the anticipatory nature of the duty, especially among service-providers."[300]

203. This view was shared by the Discrimination Law Association, the Law Society, Manchester Disabled Peoples Access Group and Transport for All.[301] Autistic UK felt that the anticipatory duty was enjoyed only by those with "physical or sensory disabilities" and that "the access issues of autistic people (and others), both to the built environment and otherwise, will in all probability remain unaddressed."[302] The University of Leeds referred to "confusion about the anticipatory reasonable adjustment duty",[303] and one disabled woman, who worked as a disabled students' adviser, explained the problems in the following terms:

> "Reactive adjustment isn't really understood so anticipatory adjustment is even worse. In my day job we highlight issues and are told "we need a named person to adapt this for" because they do not appreciate anticipation. Then when a named person who needs access appears "It's too late to ask for that" "It's too expensive" "It's too difficult" … Double-bind and nothing changes."[304]

Understanding the 'reasonable adjustment' concept

204. As the Law Centres Network said: "There is a crucial difference between, on the one hand, awareness of the phrase 'reasonable adjustments' or the understanding that a duty exists and, on the other, an understanding of what the duty entails or how to comply with it in practice."[305] Our evidence suggests that even where there was awareness, understanding was often poor.

205. This included understanding among disabled people themselves. The Disability Law Service, which provides direct advice to disabled people, told us that: "Our experience is that the majority of our service users, although recognising that there is a law that may provide them with some protection, do not understand the scope and ambit of the reasonable adjustment duty."[306] As a result, many were "often reticent to express what adjustments are necessary in the workplace."[307] The RNIB had sought to raise awareness of the provisions, but found them difficult to explain.[308]

206. As discussed in Chapter 2, a significant problem was the failure to appreciate that adjustments may require what looks like more favourable treatment. Doug Paulley told us that:

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300 Written evidence from the EHRC (EQD0083)
301 Written evidence from the Discrimination Law Association (EQD0129), The Law Society (EQD0163), Manchester Disabled Peoples Access Group (EQD0092) and Transport for All (EQD0116)
302 Written evidence from Autistic UK (EQD0170)
303 Written evidence from the University of Leeds (EQD0125)
304 Written evidence from Natalya Dell (EQD0005)
305 Written evidence from the Law Centres Network (EQD0135)
306 Written evidence from the Disability Law Service (EQD0051)
307 Written evidence from Diverse Cymru (EQD0109)
308 Q 21 (Fazilet Hadi)

> "Some people begrudge disabled people's "*special treatment*" and "*perks*" of reasonable adjustment. They resent parking permits, disability benefits and discounted admissions etc. Some do not understand that this "special treatment" is necessary to afford disabled people some access to services others take for granted. Some people with this attitude provide public services."[309]

207. Many of those contacting the Disability Law Service for advice reported that their employer had "specifically told them that they cannot show any 'favouritism' to them, when altering working arrangements."[310] Ultimately, the problem was that: "In many cases the 'one size fits all' attitude applies—the social model of disability has been lost for the returning medical model or charity model."[311]

208. Understanding was also particularly low in respect of those with 'hidden' disabilities. Diverse Cymru reported a "general perception by employers and the public that reasonable adjustments duties apply in relation to physical or sensory impairments only."[312] Mind told us that "among individuals, employers, service providers and others who have duties under the Equality Act there's currently such an obvious lack of confidence and understanding about what an adjustment could look like for someone living with a mental health problem." They cited cases where people had been told by their employer "that they cannot make adjustments for them because they are not physically disabled" and of "people on public transport using a disabled travel pass being challenged by staff because they 'don't look disabled'."[313] The Mental Health Foundation told us that people with dementia were often not recognised as disabled.[314] People living with HIV and Aids faced similar problems. Many did not see themselves as disabled, did not know they could request adjustments, or were concerned that to do so would require disclosure of their HIV status—with a consequent risk of discrimination and stigma. [315] Peter McTigue of Nottingham Trent University cited a research participant who contrasted his experience of reasonable adjustments in relation to HIV with that for his dyslexia diagnosis:

> "Compared to the dyslexia, what was really interesting was that, there's a whole load of work needs assessments, specialists out there for dyslexia and work pay for somebody to come and do a full assessment on what I'd benefit from … With HIV, and particularly with potential side-effects, there isn't anything like that."[316]

Clarity versus flexibility and the cost factor

Clarity

209. Jade Hamnett, a disabled person and former chairperson of her local disability access group, told us that:

> "I used to like the term 'reasonable' as most shops/services can provide some improvements, and how much would depend on how big they

309 Written evidence from Doug Paulley (EQD0097)
310 Written evidence from the Disability Law Service (EQD0051)
311 Written evidence from the Oxfordshire Transport and Access Group (EQD0038)
312 Written evidence from Diverse Cymru (EQD0109)
313 Written evidence from Mind (EQD0147)
314 Written evidence from the Mental Health Foundation (EQD0030)
315 Written evidence from the National AIDS Trust (EQD0136)
316 Written evidence from Peter McTigue, Nottingham Trent University (EQD0021)

> are. Now it just seems to be used in the negative—it's unreasonable to provide that. So too bad. There's no middle ground."[317]

210. Such problems led some witnesses to call for greater clarity: some through better guidance, which we consider below, but some through primary or secondary legislation that they believe is necessary to make the Equality Act more specific. Portsmouth Disability Forum sought explicit standards for the built environment and the delivery of services.[318] Scope wanted "primary or secondary legislation … making specific provision for disabled employees to take flexible adjustment leave", suggesting part time sickness absence or flexible adjustment leave as particularly beneficial.[319] A survey by Guide Dogs found that:

> "75 percent of all assistance dog owners surveyed have been refused access to a service at some point because they had an assistance dog with them. 49 percent had been refused access in the past year, and 33 percent within the last six months."[320]

Guide Dogs therefore wanted regulations to specify that shops, restaurants and other service providers are obliged to admit assistance dogs, in order to "remove ambiguity for service providers and remove the need to rely on case law and precedents for providers to fully understand their obligations."[321]

211. Communication barriers were another area where greater specificity was called for by many, especially where the communication method on offer was not felt to meet the actual needs of the individual. In response to failures by a range of services to provide a BSL interpreter, the BDA argued that: "Parliament must strengthen the Act to ensure a clear interpretation of what "reasonable adjustments" are in the context of Deaf BSL users".[322] Andrew Lee, of People First (Self Advocacy), explained how he and his wife were refused an EasyRead version of their tenancy agreement, because the local authority assumed that they had support as they were in "a warden-controlled set up". In reality they did not, and found themselves having to wait three months for an advocacy worker to read it to them.[323] Scope pointed out that "there is currently no UK case-law precedent to provide clarification, guidance or criteria around what constitutes "reasonableness" in the context of adjustments to enable access to a website."[324]

212. These problems emerged despite the fact that, as Lord Low of Dalston highlighted, section 20(6) of the Equality Act makes it clear that the duty to make reasonable adjustments includes "a duty to provide information in an accessible format where appropriate".[325]

Flexibility

213. The Government has consistently argued against further specificity. Tracey Kerr explained:

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317 Written evidence from Jade Hamnett (EQD0140)
318 Written evidence from Portsmouth Disability Forum (EQD0084)
319 Written evidence from Scope (EQD0158)
320 Written evidence from Guide Dogs (EQD0041)
321 *Ibid.*
322 Written evidence from the British Deaf Association (EQD0101). We consider this issue in detail in Chapter 4.
323 Q 61 (Andrew Lee)
324 Written evidence from Scope (EQD0158)
325 Written evidence from Lord Low of Dalston (EQD0165)

> "What is reasonable to one disabled person may not be reasonable to another, so it is very difficult to set standard criteria or give a standard example of what is reasonable. For example, on wheelchair access, there are different types of wheelchairs and different types of disabilities. We think it is most appropriate … for claimants to go to the courts to explain what is reasonable for them and for the courts to decide."[326]

214. The Equality and Human Rights Commission also opposed a more prescriptive approach. They felt that:

> "The flexibility and sensitivity to different needs and circumstances offered by the reasonable adjustment duty has advantages over a more prescriptive, one-size-fits-all list of steps for people with particular impairments; for example, a flexible duty is better at keeping up to speed with technological developments."[327]

This latter point was acknowledged by the British Deaf Association, although they remained concerned with the subjective nature of the term 'reasonable'.[328]

215. The National Deaf Children's Society felt that: "One of the advantages of the concept of reasonable adjustments is that it takes into account the individual facts of a case and can be flexibly applied to different circumstances. We would be concerned that any move to 'standardise' what a reasonable adjustment is would remove that flexibility in a way that would not always be positive."[329]

216. Representatives of employers felt much the same. The Business Disability Forum told us that "a principles-based approach to what constitutes reasonable adjustments is sensible. It is impossible to legislate for every type of adjustment that might be necessary in every situation."[330] Others who argued for flexibility included the Law Society, the Disability Law Service, Disability Rights UK and the Discrimination Law Association.[331]

217. **We have carefully considered the statutory provisions on reasonable adjustment and conclude that, despite the problems described, the flexibility they provide is necessary for their effectiveness.** We make recommendations below that we believe will provide the necessary clarity on how to meet the reasonable adjustment duty in practice.

Cost

218. A person who is subject to a duty to make reasonable adjustments is not entitled to require a disabled person to pay the costs of meeting that duty.[332] Costs can, however, be a consideration in determining whether a particular adjustment is reasonable. This question was considered in *Cordell v Foreign and Commonwealth Office*, where the Employment Appeal Tribunal upheld the finding that the provision of lip speakers for the purposes of a diplomatic posting in Kazakhstan, estimated to cost in the region of £250,000, was

326 Q 8 (Tracey Kerr)
327 Written evidence from the Equality and Human Rights Commission (EQD0083)
328 Written evidence from the British Deaf Association (EQD0101); Q 70 (Terry Riley)
329 Written evidence from The National Deaf Children's Society (EQD0053)
330 Written evidence from Business Disability Forum (EQD0093)
331 Written evidence from the Law Society (EQD0163), the Disability Law Service (EQD0051), Disability Rights UK (EQD0105) and the Discrimination Law Association (EQD0129)
332 Except for common parts, if brought into force.

not reasonable.[333] The British Deaf Association criticised this decision as effectively capping the costs an employer is expected to pay for adjustments. David Buxton, of the British Deaf Association, told us:

> "This woman had an opportunity to get a job as a Deputy Ambassador—what an achievement. Deaf people thought, "How great", and then the deaf people were let down. If you want the opportunity to train as a lawyer or some other sort of profession, you think, "No, my progression is blocked because of cost". Of course, we accept that it is about cost. That is a reality. But there are alternative ways. You could have used videorelay services, for example. Technology has improved so much. There are better technological solutions."[334]

219. Paul Breckell, Chief Executive of Action on Hearing Loss and Chair of the Disability Charities Consortium, agreed that there was a cost, but felt that the bill was worth paying. This was because it not only met the rights of the individual, but also provided role models for other deaf and disabled people in society.[335] The finding of the Employment Appeal Tribunal in *Cordell* does not, however, prevent reliance on such considerations. Rather it found that:

> "A decision about what steps are reasonable … cannot be a product of nice analysis. … judgment of what level of cost it is reasonable to expect an employer to incur can be informed by a variety of considerations that may help them to see the required expenditure in context and in proportion. … Ultimately there remains no objective measure for calibrating the value of one kind of expenditure against another."[336]

220. Where costs are high, the availability of Access to Work funding for more expensive adjustments was welcomed by respondents, although some felt that individuals and employers did not know of the scheme and the description of it as 'the Government's best kept secret' still applied.[337] Access to Work provides grants for support that is more costly than an employer would normally be expected to meet, and at least one of our witnesses had themselves been enabled to give evidence by the support provided.[338] The Minister for Disabled People, Justin Tomlinson MP, was enthusiastic about the scheme. He told us that the Government had significantly increased the funding to extend Access to Work and that it was an important part of the Government's Disability Confident campaign.[339] Disability Rights UK, however, feared that the scheme had started to face restrictions and that any shifting of cost to employers could have a negative impact on their willingness and ability to make reasonable adjustments.[340]

221. In October 2015 the Government introduced a cap of £40,800 per year on Access to Work grants. While significantly above the average grant of just over £3000 per person in 2013/14,[341] this cap was criticised as effectively

333 *Cordell v Foreign and Commonwealth Office*, Appeal No. UKEAT/0016/11/SM, 5 October 2011
334 Q 71 (David Buxton)
335 Q 107 (Paul Breckell)
336 *Cordell v Foreign and Commonwealth Office*, Appeal No. UKEAT/0016/11/SM, 5 October 2011., at para 30
337 Q 59 (Paul Farmer)
338 Andrew Lee, Director of Policy and Campaigns, People First (Self Advocacy) QQ 60–65
339 Q 188 (Justin Tomlinson MP)
340 Written evidence from Disability Rights UK (EQD0105)
341 Department for Work and Pensions, *Equality analysis for the future of Access to Work* (May 2015): https://www.gov.uk/government/publications/future-of-access-to-work [accessed 9 March 2016]

removing support from those with "high value"[342] access needs. The Government's equality impact assessment of the changes estimated that 200 people would be affected, of which 181, or 89.5%, were deaf or had hearing loss. In the context of the 35,540 people assisted in 2013/14 this may seem a small number, but the impact on those affected may be that they are unable to work.[343] As Mr Breckell said, "imposing a cap is basically saying, 'There comes a point when supporting a disabled person in the workplace is not affordable'".[344] The equality impact assessment acknowledged this, stating that: "One of the significant strategic questions we face is how to establish the right balance between the need to support as many disabled people as possible and what it is reasonable to offer individual users."[345]

222. Disability Rights UK argued that: "Placing more responsibility on employers for supports and adjustments risks deterring employers from employing disabled people." They added that "without Access to Work, employers in effect may be expected to pick up the costs of adjustments that are not 'reasonable', particularly in the case of small employers."[346] This concern was also acknowledged in the Government's equality impact assessment.

223. Similar concerns have been expressed regarding possible reductions in the support provided to disabled students through the Disabled Students Allowance. The National Deaf Children's Society told us that:

> "This is being justified on the basis that universities are already subject to a duty to make reasonable adjustments … No additional funding has been provided to universities to reflect this change nor does there appear to have been any substantive consideration on whether disabled students will be able to hold universities to account if the university fails to make reasonable adjustments in a timely and effective way."[347]

224. Not all reasonable adjustments will be high cost. As Sense told us: "Many reasonable adjustments, such as providing information in large prints at restaurants or a shop owner helping a person to find the goods they need are not costly, and can be very easy to make."[348] The problem can be that employers and service providers lack knowledge of the actual cost involved and, as Catherine Yates, a family carer to her husband and son, both of whom are disabled, said: "Some organisations immediately assume that the term "reasonable adjustments" will automatically require a substantial cash investment even though this is most often not the case."[349] Basing decisions on such assumptions is likely to result in problems for employers or service providers, as case law has established that "once a potential reasonable adjustment has been identified by the claimant, the burden of proving that such an adjustment was not a reasonable one to make shifts

342 Written evidence from People First (Self Advocacy) (EQD0134)
343 Department for Work and Pensions, *Equality Analysis for the future of Access to Work* (May 2015) p 11: https://www.gov.uk/government/publications/future-of-access-to-work [accessed 2 March 2016]
344 Q 112 (Paul Breckell)
345 Department for Work and Pensions, *Equality Analysis for the future of Access to Work* (May 2015) p 10: https://www.gov.uk/government/publications/future-of-access-to-work [accessed 2 March 2016]
346 Written evidence from Disability Rights UK (EQD0105)
347 Written evidence from National Deaf Children's Society (EQD0053)
348 Written evidence from Sense (EQD0122)
349 Written evidence from Catherine Yates (EQD0155)

to the defendants".[350] This will be difficult to do without knowledge of the expected cost.

225. **We have sympathy for those calling for greater clarity on how 'reasonable' cost is determined, but question how far this is possible given that this can be a matter of judgment rather than objective criteria. Exercising this judgment does, however, require information, and guidance should make it clear that an adjustment should not be rejected as unreasonable on grounds of cost unless the expected cost is known.**

Code of Practice and guidance

226. Clarity is important, but there are ways of clarifying what adjustments are reasonable and what are not, which do not involve either more specific legislation or frequent resort to the courts. The case for better guidance was made forcefully by Muscular Dystrophy UK:

> "But why hasn't the tide turned? Why didn't every business buy a folding ramp in 2010 and install a hearing loop? Why didn't the double glazing salesmen suddenly have a special offer on level threshold doorways with an extra discount for lightweight doors? Why didn't pasta sauce manufacturers demand that the designers of the labels for the jars use a bigger font that's actually readable? The simple answer is, no one told them to, and no one told them how.
>
> It's not easy to find an "Accessibility for Dummies" book, even if you look for one. Generic "How to … business" books have very little, if any, information on accessibility. Even if they did, we run into the same questions: What is a "reasonable adjustment" anyway?"[351]

227. The Business Disability Forum agreed that more statutory guidance may be needed to "minimise the need for legal challenge while increasingly removing the barriers disabled people face to equal participation because of their disability."[352] The RNIB were in favour of statutory guidance as it would "provide significantly more detailed advice as to when the duty arises, what constitutes a reasonable adjustment, what constitutes substantial disadvantage, how the anticipatory duty can be met and what the continuing/evolving nature of the duty means in reality."[353] Witnesses also felt it important that guidance should use examples and explain how cost is taken into account.[354]

228. IPSEA supported using a Code of Practice to be more explicit on what constitutes a reasonable adjustment,[355] and the Bar Council asked for consideration to be given to "augmenting the Codes of Practice" with further examples of reasonable adjustments and to see the Codes taken into account "prior to judicial decision-making."[356] The University of Leeds argued that: "Alongside the current codes, which integrate guidance on reasonable

350 *Finnigan v Chief Constable of Northumbria Police* [2013] EWCA Civ 1191, cited by Sheffield Citizens Advice and Law Centre (EQD0102)
351 Written evidence from Muscular Dystrophy UK (EQD0052)
352 Written evidence from the Business Disability Forum (EQD0093)
353 Written evidence from RNIB (EQD0164)
354 Written evidence from Action on Hearing Loss (EQD0128)
355 Written evidence from IPSEA (EQD0040)
356 Written evidence from the Bar Council (EQD0161)

adjustments into more generic guidance, we suggest that there is a need for a separate code on reasonable adjustments".[357]

229. Almost all the issues discussed in this chapter were cited as problems that statutory guidance could help with: the Nuffield Council on Bioethics felt that practical guidance would help people understand adjustments for people with dementia;[358] the Newcastle Society for Blind People wanted guidance on the role of cost in deciding what is reasonable;[359] and Muscular Dystrophy UK wanted examples of best practice and how to complain if reasonable adjustments were not made.[360] The proactive nature of the duty had recently been put in doubt by a case in the Employment Appeal Tribunal (EAT), *Griffiths v Secretary of State for Work and Pensions*,[361] which equated disability-related leave with sickness absence not related to disability. The Business Disability Forum felt that this suggested that "if a policy, procedure or criteria applies to everyone it cannot place a disabled person at a substantial disadvantage"[362]. The Bar Council and Disability Rights UK both wanted clarity on this matter, particularly as the judgment appeared to contradict the relevant Code of Practice.[363] Since our call for evidence, the Court of Appeal has ruled on *Griffiths* and overturned the EAT decision, holding that "The duty arises once there is evidence that the arrangements placed the disabled person at a substantial disadvantage because of her disability."[364] It is nevertheless of concern that 20 years on from the original Disability Discrimination Act this question required a Court of Appeal judgment to set it right.

230. We agree that guidance is the appropriate means by which to provide the clarity that our witnesses sought. Given the considerable problems outlined above with compliance, this guidance must have teeth, and we agree with the University of Leeds that the best way to achieve this is by a Code of Practice. While keeping in mind the caution, offered by the Association of National Specialist Colleges, that guidance and attempts to be "over explicit" can "go out of date quite quickly",[365] we believe that the EHRC, whose guidance is already well respected, is ideally placed to manage this risk.

231. **The Equality and Human Rights Commission should prepare a specific Code of Practice on reasonable adjustments to supplement the existing Equality Act Codes. This would provide an appropriate balance between flexibility and clarity.** Without it there is a real risk of employers and service providers acting illegally because of ignorance of their obligations.

232. We have explained in Chapter 3 how Ministers have in three cases inexplicably refused to lay draft Codes of Practice before Parliament and make Orders giving them statutory force. This cannot be allowed to happen in the case of a new Code on reasonable adjustments.

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357 Written evidence from the University of Leeds (EQD0125)
358 Written evidence from the Nuffield Council on Bioethics (EQD0012)
359 Written evidence from the Newcastle Society for Blind People (EQD0100)
360 Written evidence from Muscular Dystrophy UK (EQD0052)
361 *Griffiths v Secretary of State for Work and Pensions*, Appeal No. UKEAT/0372/13/JOJ, 15 May 2014
362 Written evidence from the Business Disability Forum (EQD0093)
363 Written evidence from the Bar Council (EQD0161)
364 *Griffiths v The Secretary of State for Work & Pensions*, [2015] EWCA Civ 1265, at para 63
365 Written evidence from Association of National Specialist Colleges (EQD0123)

233. Of course, guidance is only as good as the use to which it is put. We heard some good examples of organisations that used membership structures to promote information on the requirements of the Equality Act. Marie-Claire Frankie, giving evidence for the National Association of Licensing and Enforcement Officers (NALEO), told us that Sheffield Council used its regular newsletter to taxi drivers to detail successful prosecutions under the Act and remind drivers "of what they should do and that their licences could be at risk if they did not take guide dogs, for example."[366] Ms Frankie also spoke about how NALEO kept their members up to date:

> "In relation to case law and stated cases that come up, NALEO, as an organisation, circulates that to all the members, so all 600 members then get notification of this case, the requirements and all the commentary from it. It is for them to feed that into their day-to-day licensing role."[367]

234. **Alongside the new Code, the Equality and Human Rights Commission should produce, in consultation with organisations of and representing disabled people, industry-specific guidance on reasonable adjustment. Where appropriate this should be done in partnership with relevant professional and regulatory bodies. Regular updates on case law developments will be essential to the effectiveness of these guides, and should be provided by the EHRC.**

Common parts

235. Section 36 of the Equality Act 2010, and Schedule 4, include provisions on reasonable adjustments to the common parts of buildings such as blocks of flats. These provisions have not yet been commenced. If they were, those responsible for the common parts (such as a landlord in a leasehold block of flats) would have to agree to changes to common parts if asked by a disabled tenant and if, after consulting the other residents, they concluded that it would be reasonable to do so. It is always legal for the landlord to ask the disabled tenant to pay for the alteration.

236. The failure to commence these provisions was criticised by the Equality and Human Rights Commission, the Discrimination Law Association, the Disability Law Service, University of Leeds, Disability Rights UK, and the Law Centres Network.[368] Justin Bates of the Housing Law Practitioners Association gave us a practical example of a case in which he had been involved:

> "An elderly leaseholder has a flat on the second and third floor. There is absolutely no reason why she cannot live independently, save that she has mobility issues. She wants to install a stair lift to get up to her second or third floor flat. She asks the freeholder for permission. The freeholder says no. She offers to pay the installation costs and all the running costs herself so there is no drain on the service charge. The freeholder says no. On the face of it, that is a lawful refusal."[369]

366 Q 152 (Marie Claire-Frankie)
367 *Ibid.*
368 Written evidence from the Equality and Human Rights Commission (EQD0083), the Discrimination Law Association (EQD0129), the Disability Law Service (EQD0051), University of Leeds (EQD0125), Disability Rights UK (EQD0105) and the Law Centres Network (EQD0135)
369 Q 132 (Justin Bates)

237. The Government explained that the previous Government delayed implementation of the provision "until Scottish Government experience in implementing section 37 (adjustment to common parts in Scotland) was available", and that it was "currently considering the future of these un-commenced provisions."[370]

238. The Minister justified this position on the basis that:

> "The decision to wait for the Scottish experience of implementation was taken in light of concerns about how the provision would work in practice and what it would cost. We wanted to see how that worked, regardless of the different legal position, in terms of the cost."[371]

239. Although section 37 is in force for Scotland, it has no effect unless Regulations are made to put it into practice. No such Regulations have yet been made, although Justin Bates told us that there had been consultation on draft Regulations.[372] There is thus no Scottish experience to draw on, nor will there be in the foreseeable future.

240. Even if Scottish Regulations were made, the duties imposed would be different: section 36 would impose in England a duty on landlords to make reasonable adjustments, while section 37 in Scotland would entitle both a disabled owner and a disabled tenant to make 'relevant' adjustments (to be defined in Regulations), but would not impose a duty on anyone. Further, as Justin Bates points out:

> "Scotland is not that helpful to look at: one, they do not have leasehold land in the way that England and Wales do, so the underlying legal structure will not be the same; two, the draft regulations … come at it from a slightly different perspective as to whose consent you would need and how it would work, primarily because they do not have leasehold land. You will not be able to transpose the Scottish experience to the English one anyway, so it does not work as a reason not to do this."[373]

241. We are also unconvinced by concerns of cost and 'red tape', especially given that the cost of any adjustment would fall to the leaseholder or tenant and not the landlord. The Committee asked the Government to provide the evidence on which such concerns were based, and were guided to the impact assessment of the Equality Act.[374] This outlined some of the history of the provisions:

> "During the Lords' stages of the Disability Discrimination Bill which led to the Disability Discrimination Act 2005 there was strong cross-Party pressure to give disabled people the right to make alterations to the common parts of let residential premises. The amendments were resisted at the time because of lack of time to resolve the complex legal

370 Written evidence from HM Government through the Department for Education (EQD0121)
371 Q 181 (Nicky Morgan MP)
372 Q 132 (Justin Bates)
373 Q 132 (Justin Bates)
374 Supplementary written evidence from the Department for Communities and Local Government (EQD0191)

> issues involved. Peers accepted instead that a review should be mounted into the issues and that this review would report, by the end of 2005."[375]

242. The Government subsequently set up the Review Group on Common Parts to undertake this detailed examination. The Group included representatives of disability organisations, the former Disability Rights Commission, landlord organisations, and officials from relevant Government departments and the Scottish Executive. It concluded that both legislative and non-legislative measures were needed. The non-legislative proposals were addressed by a statement to Parliament on 13 July 2006 by the Minister for Disabled People, but the impact assessment highlights that:

> "A Court case, correspondence from landlords and tenants and the response to the consultation document has shown that there are still people who need alterations but are unable to get them under the current system. The legislation would balance the needs of the disabled person and the needs of the landlord or manager of the premises."[376]

243. Far from supporting the Government's concerns, the impact assessment demonstrates the extensive consideration already given to the costs and technical difficulties of these provisions. It is to be regretted that disabled people have had to wait over 10 years for a solution to what is a clear problem, especially as the law has been on the statute book for over half that time. The Secretary of State told us that she has now asked the Government Equalities Office to review the question of commencement of the provisions on common parts as a separate exercise "to see where we go from here, given the non-experiences of the Scottish Government."[377]

244. **We do not understand why yet another review is needed of the commencement of the provisions dealing with alterations to common parts. There is no justification for further delay. They must be brought into force forthwith.**

Sports grounds

245. The accessibility of sports grounds has long been a matter of concern. We considered written evidence from the charity Level Playing Field on the provision of disabled access facilities at Britain's sports grounds,[378] and questioned Justin Tomlinson MP, the Minister for Disabled People, about this. He confirmed his previously expressed view that:

> "Most football clubs in this country are behind when it comes to disability access to their grounds. It is my belief that football should be a game enjoyed by everyone, and someone with a disability should have as much of an opportunity to watch the game as someone without a disability".[379]

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375 Government Equalities Office, *Equality Act Impact Assessment, Version 5 (Royal Assent),* April 2010, p 115: http://www.parliament.uk/documents/impact-assessments/IA14-02F.pdf [accessed 11 March 2016]

376 *Ibid.*, pp 115–116

377 Q 181 (Nicky Morgan MP)

378 Written evidence from Level Playing Field (EQD0141)

379 Justin Tomlinson MP, 'Local MP Joins Trust STFC To Talk About Football In Swindon': http://www.justintomlinson.com/news/3450-local-mp-joins-trust-stfc-to-talk-about-football-in-swindon [accessed 11 March 2016]

246. On provision for disabled people, he similarly confirmed his view that: "Frankly, some of it is disgraceful. There is not provision in some grounds. Supporters are split up or are put in with the away fans. I find that totally unacceptable. We are in the last chance saloon with those football bodies, saying, 'You need to get your house in order'".[380]

247. The Equality Act 2010 has not succeeded in giving disabled sports fans the access to stadia to which they are entitled, and new measures are needed. A particular problem—to which we refer elsewhere in this report—is the law's requirement that only individuals may bring actions against institutions which are failing in their duty to comply with the Act. The nature of the relationship between a football fan and his or her own club is often deep-rooted and passionate, and makes it hard for the fan to initiate proceedings.

248. One member of this Committee[381] introduced into the House of Lords the Accessible Sports Grounds Bill which would give local authorities a discretionary power to refuse a safety certificate to any large sports stadia—not just football grounds—which do not comply with the accessible stadia guidelines published by the Sports Grounds Safety Authority. His Bill was supported by other Committee members at second reading, and we support it as a Committee. It was agreed by this House, but blocked by the Government on second reading in the House of Commons on 11 March 2016. **We recommend that the Government include provisions similar to those of the Accessible Sports Grounds Bill in a Government Bill.**

249. As a response to the Bill, the FA Premier League gave an undertaking that all its clubs would comply with the accessible stadia guidelines by August 2017.[382] We welcome that commitment, which does not depend on the Bill being enacted, but we are unclear on how the Government intends to monitor its fulfilment. **We recommend that ministers report regularly to Parliament on the progress made (a) by the Premier League and by the Football League, and (b) on comparable action by the operators of other large stadia.**

380 Q 184 (Justin Tomlinson MP, agreeing with comments he had previously made to BBC Sport, cited by Lord Faulkner of Worcester)

381 Lord Faulkner of Worcester

382 Premier League, *Premier League clubs commit to improving accessibility for disabled fans* (September 2015) http://www.premierleague.com/en-gb/news/news/2015–16/sep/140915-premier-league-clubs-commit-to-improving-accessibility.html [accessed 9 March 2016]

CHAPTER 6: CARERS

The position of carers under the Equality Act

250. While the Equality Act provides rights to individuals, in reality the relationships that people have with one another can be as important—few more so than when we provide care for, or receive care from, a loved one. Carers UK estimate that there are 6.5 million people providing unpaid care for an ill, older or disabled family member, friend or partner.[383] They predict that by 2037 this number will rise to 9 million and that 3 in 5 people will be carers at some point in their lives. Carers may also be disabled people: an NHS Information Centre Survey found that 27% of carers were in receipt of Disability Living Allowance as a result of their own disability or ill health.[384]

251. Unpaid and family caring can have an impact on the ability of people to work: Over two million such carers work full-time and one million part-time. Part-time working is much more common amongst carers than non-carers, but carers are also more likely to stop working altogether as they "struggle to switch to part-time hours."[385] Carers with disabilities are even more likely to give up work to care.[386] In this report we use the term 'carer' to refer to those who provide unpaid care to a family member, friend or partner.

Discrimination and Carers

252. Carers UK told us that in a survey of carers, 8% of those who gave up work did so "because of difficulties or disputes with their employer."[387] Their research also showed "that 14% of carers had been the victim of harassment as a result of disability or caring and a further 11% had been denied services because of disability or caring responsibilities."[388] The Challenging Behaviour Foundation told us that they had "many instances of carers experiencing direct discrimination and harassment."[389] One example provided in their evidence was of the mother of 'C', a young person with a severe learning disability. She had told them that:

> "If I had a pound for every time I heard someone say, 'if he were my son I would give him a good spanking' or, 'if he were mine I wouldn't take him out in public', I would be a rich woman. Not one day has gone by when I have taken C out that I do not hear at least one derogatory, hurtful remark about my beautiful son."[390]

253. It can often be difficult to distinguish between the effect on a disabled person and the effect on their carer. Emily Holzhausen of Carers UK gave the example of a carer talking about the private rented sector: "She has a child with special needs, and was asked several times whether he was destructive

383 Carers UK, 'Facts About carers 2015' (October 2015) p 1: https://www.carersuk.org/images/Facts_about_Carers_2015.pdf [accessed on 2 March 2016]
384 NHS Information Centre for Health and Social Care, *Survey of Carers in Households 2009/10* (December 2010) p 8: http://www.hscic.gov.uk/catalogue/PUB02200/surv-care-hous-eng-2009–2010-rep1.pdf [accessed on 2 March 2016]
385 Carers UK, 'Facts About carers 2015' (October 2015) p 10: https://www.carersuk.org/images/Facts_about_Carers_2015.pdf [accessed on 2 March 2016]
386 Carers UK, 'Facts about carers 2015' (October 2015) p 5 https://www.carersuk.org/images/Facts_about_Carers_2015.pdf [accessed on 2 March 2016]
387 Supplementary written evidence from Carers UK (EQD0193)
388 Written evidence from Carers UK (EQD0060)
389 Written evidence from Challenging Behaviour Foundation (EQD0153)
390 *Ibid.*

or would burn the house down. That is clearly discrimination by association, but it is also directly discriminating against her child".[391]

254. A further dimension to the complexity of the experience of carers is that many carers are themselves disabled. Jeanine Blamires, who cares for her disabled daughter and, as a disabled person, is in turn cared for by her husband, and at times her daughter, explained that:

> "I cannot put my role as carer separate from disabled person … I need to be looked at as mum and listened to as mum, but I also need to be listened to as that knackered woman who at times can barely move or talk. … I am this one person who has got all these bits and pieces; see me as the whole and try and make it work, please."[392]

255. Emily Holzhausen felt that such problems arose because services "do not see the disability behind the person who is a carer, just as they do not often see the carer behind the disabled person." She told us that the assessment processes of some local authorities did not "understand that you can have a disability and still be a carer."[393] This was starkly demonstrated when Jeanine Blamires told us how reference to her disability was removed from her daughter's social care records, with the result that she was faced with trying to "access a service as a disabled person who is recorded as able bodied".[394] At its worst this had "affected getting adapted housing even though officially we were for years at the top of our local housing list. It also affected the help for us to care for our eldest as carers with disabilities and has been incredibly isolating and distressing."[395]

Protection under the Equality Act 2010

256. Carers UK were concerned that "the relationship between carers and the Equality Act 2010 in terms of their rights is not a straightforward and obvious one."[396] This is true, and is made more so by the complexity of the caring relationships, and the ways in which a carer can be impacted by the difficulties facing the disabled people for whom they care.

Discrimination by association

257. The only provisions that directly protect carers, as carers, are those on direct discrimination and harassment. This is often termed 'discrimination by association' and was made explicit in the Equality Act following the successful challenge to a requirement in the DDA that the claimant themselves be a disabled person.[397]

391 Q 172 (Emily Holzhausen)
392 Q 171 (Jeanine Blamires)
393 Q 172 (Emily Holzhausen)
394 Written evidence from David and Jeanine Blamires (EQD0197)
395 *Ibid.*
396 Written evidence from Carers UK (EQD0060)
397 *Coleman v Attridge Law (A Firm)* (C-303/06) [2008] All E.R. (EC) 1105.

Box 6: Coleman v Attridge Law

Sharon Coleman's son was born with a rare condition affecting his breathing and also has a hearing impairment. Ms Coleman brought a case claiming she was forced to resign from her job as a legal secretary after being harassed by her employers and being refused flexible working which other employees without disabled children were granted. She argued that she had been targeted because she had a child with a disability. The case was brought under the DDA, which required that discrimination be on the grounds of the claimant's disability. Ms Coleman argued successfully that EU Law (which prohibits disability discrimination in employment) required protection for those discriminated against because of their association with a disabled person.

258. This change was welcomed by a number of witnesses,[398] but concerns remained about how well and widely the existence of such protection was known.[399] When we asked Jeanine Blamires' husband, David, about the provision he told us that:

> "This is literally the first time I have heard of this, and I have been caring for either my wife or daughter for 21 years. I accept the Act only came in five years ago, but this is a revelation."[400]

259. Mr Blamires knew enough about the Act, and his and his family's rights under it, to come and give this Committee valuable evidence. That he did not know about associative discrimination tells us that more needs to be done to enable carers to access their rights.

The duty to make reasonable adjustments

260. One limitation on the concept of discrimination by association is that, as the law currently stands, it applies only to direct discrimination and harassment. The Disability Law Service explained that "Carers cannot use the [Equality Act] to request reasonable adjustments … because the wording of s 20 excludes discrimination by association".[401] Carers UK called for the extension of the duty to make reasonable adjustments to carers, framed in the same terms as the duty when applied to disabled people, so that "whether the adjustment is reasonable is weighted against whether it imposes disproportionate costs to an employer or disadvantage to other groups."[402]

261. In 2014 the Court of Appeal in *Hainsworth v Ministry of Defence*[403] considered the extent of the duty to make reasonable adjustments. The claimant wanted to be transferred from Germany to England as a reasonable adjustment, so that her disabled daughter's special needs could be accommodated, arguing that the duty to make reasonable adjustments applied in respect of those who were associated with a disabled person. The Court of Appeal decided that it did not. On 1 December 2015 the Supreme Court refused an application for leave to appeal and refused to make a reference to the Court of Justice of the European Union.[404]

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398 Written evidence from Action on Hearing Loss (EQD0128), TUC (EQD0055) and Inclusion London (EQD0075)
399 Written evidence from Carers UK (EQD0060)
400 Q 169 (David Blamires)
401 Written evidence from the Disability Law Service (EQD0051)
402 Written evidence from Carers UK (EQD0060)
403 *Hainsworth v Ministry of Defence* (2014) EWCA Civ 763
404 *Hainsworth v Ministry of Defence* (2014) UKSC 2014/0164

Carers and indirect discrimination

262. Carers UK have called for protection against indirect discrimination to be extended to cover carers, the lack of which "means, for example, that if a carer is forced to leave their job because the employer operates a shift pattern which they cannot comply with because they need to provide care at a certain time of the day … and no allowance is made of those needs, then they have no recourse to the law."[405]

263. This is also an area that has received judicial attention, albeit not in the context of disability. In *Chez Razpredelenie Bulgaria AD v Komisia Za Zashtita Ot Diskriminatsia*[406] the owner of a grocery shop in Bulgaria brought a claim of discrimination against an electricity supplier, because it placed its electricity meters above head height in an area populated largely by people of Roma origin. This prevented the claimant from reading the meter and was because the electricity supplier believed that those of Roma origin were more likely to tamper with or vandalise the meters. Though the claimant was not herself Roma, she was able to claim discrimination because she lived in the area and suffered the same detriment as the Roma residents. That decision was made under the Race Equality Directive[407], and it remains to be seen if the same reasoning would be applied in respect of other protected characteristics.

The rights of carers outside the Equality Act

264. Protection under the Equality Act is, rightly, important for carers. There are however other sources of protection that may provide redress without the need for further legislation.

Flexible working in employment

Box 7: What is the right to request flexible working?

Under provisions set out in the Employment Rights Act 1996 and regulations made under it, all employees have a statutory right to ask their employer for a change to their contractual terms and conditions of employment to work flexibly, provided they have worked for their employer for 26 weeks continuously at the date the application is made. An employee can only make one statutory request in any 12 month period.

Before June 2014 the right only applied to the parents of children under 17, or 18 in the case of parents of disabled children, or to those caring for an adult. Now any eligible employee can apply to work flexibly for any reason.

Source: ACAS, The right to request flexible working: an Acas guide, 2014

265. Carers UK acknowledged that "a carer's likely reasonable adjustments are more likely to be in keeping with flexibilities needed by parents of children under 18, rather than disabled people"[408]. Emily Holzhausen felt that "the right to request flexible working … has loosened up a few attitudes to different work patterns".[409] There were, nevertheless, "some more entrenched issues. For example, people think flexible work patterns is working different shifts,

405 Supplementary written evidence from Carers UK (EQD0193)
406 *Chez Razpredelenie Bulgaria AD v Komisia Za Zashtita Ot Diskriminatsia* (2015) Case C-83/14 IRLR 746
407 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
408 Written evidence from Carers UK (EQD0060)
409 Q 172 (Emily Holzhausen)

but for some families having set shifts—because you are a carer, because the person who comes in and supports your family in the meantime only comes in at a particular time—is what you need."[410]

266. The Disability Law Service were concerned that the right to flexible working was "centred on the employer's interests, rather than the disabled person's interests."[411] However, good practice does exist: Business Disability Forum Partner Barclays Bank described this in its approach to inclusive workplaces: "You always are anticipating need, regardless of what type of need we are talking about, and that is whether it is a physical disability, an unseen disability, childcare requirements, caregiver requirements, mental health and wellness or just wellbeing in the workplace."[412]

Existing rights to support: the Care Act

267. Not mentioned by witnesses were the further rights that unpaid and family carers have under the Care Act 2014. This is not surprising given that they only came into force in April 2015. Briefing material produced by Carers UK, and published on their website, explains that the Act put carers "on a similar footing to people with care and support needs in terms of rights to assessment and support."[413] Research with 18 local authorities explored the opportunities that this presented, which included "higher awareness and a culture of recognition and support",[414] improvements to carer's needs assessments, and more meaningful interactions with carers. One authority also saw an opportunity to integrate support for families better, developing "family based approaches".[415] This latter opportunity would be of particular benefit to families such as the Blamires, who rely on a "caring circle"[416].

268. If the existing statutory provisions relating to carers were better implemented and more widely known there would be no need to legislate for further protection. Discrimination by association, if better understood, provides important protections for carers from direct discrimination and harassment. The right to request flexible working has the potential to deliver the type of workplace adjustments needed by carers. The Care Act, once properly bedded in, has the means to support those with multifaceted identities—be that parent, grandparent, friend, carer, child, disabled person or any combination of these.

269. **The Equality and Human Rights Commission should work with carers' organisations to produce and disseminate guidance on the rights of carers under the Equality Act 2010.**

270. **The Government Equalities Office, the Office for Disability Issues, the Department for Business, Innovation and Skills and the EHRC should undertake joint work to encourage employers to respond positively to flexible working requests from carers of disabled people.**

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410 *Ibid.*
411 Written evidence from Disability Law Service (EQD0051)
412 Q 76 (Mark McLane)
413 Carers UK, *Care Act 2014 and Carers: Opportunities for Change* (March 2015) p 1 http://www.carersuk.org/search/care-act-2014-and-carers-opportunities-for-change [accessed on 7 March 2016)
414 *Ibid.*
415 *Ibid.*
416 Q 171 (Jeanine Blamires)

CHAPTER 7: TRANSPORT

Introduction

271. Transport, by whatever means, presents one of the greatest challenges to disabled people. The written evidence we have received from individuals tells us more about problems with transport than about any other single topic. Those with mobility problems are not the only sufferers. Blind people, deaf people and those with mental health problems can find that transport systems put just as many obstacles in their way.

272. The frustration felt by many disabled people is summarised in the written evidence of Transport for All:

> "With respect to transport, disabled people are still hugely disadvantaged. Twenty years after the DDA was passed, progress has been slow towards being able to travel with the same freedom and independence as everyone else. The difficulties disabled people face using transport is one of the major factors behind our exclusion from work; from healthcare; from education and from public life in general … While there are some examples where the Act has been useful in making the case for equality to transport providers, it has largely failed in bringing about transport equality for disabled people."[417]

273. Of the many distressing experiences which our witnesses recounted, that of Mrs Catherine Scarlett, a wheelchair user, is perhaps the most vivid.

Box 8: Travel by train for a wheelchair user

"On July 10th 2014 I was travelling back from Hull to Driffield with my 12 year old daughter. We were assured a couple of times by the conductor that he would get the ramps at Driffield. We were waiting at the train door at Driffield when the signal for setting off was given and the train pulled away again … the conductor … was very apologetic and said he'd forgotten as he'd been helping a group of small children onto the train. He said that they would have to take us to Bridlington and put us on a train back. … I was very nervous on approaching Driffield and we waited by the door again but the same thing happened again! … [The guard] apologised and said he'd forgotten because he had toothache. He said if he let me off at the village that there was another train in 5 minutes. We were put down at this unmanned station and found that we had to go out via a gravelled car park and across the road to get to the other platform. I had only just got to the level crossing when the barrier came down and the other train pulled in. I had to ring my husband to pick us up."[418]

274. The Disabled Persons Transport Advisory Committee (DPTAC) is an independent body established by the Transport Act 1985. In 2010 it was on the Coalition Government's list of non-departmental public bodies (NDPBs) to be abolished, but after consultation the Government decided to retain it specifically to advise the Department for Transport on the transport needs of disabled people.[419]

275. DPTAC summarised the position in their written evidence:

417 Written evidence from Transport for All (EQD0116)
418 Written evidence from Mrs Catherine Scarlett (EQD0004)
419 HC Deb, 12 June 2013, col 9WS

> "Although equality legislation over the years has resulted in many positive changes, an increase in accessibility and a different culture, and has also created a legitimate expectation among disabled people that they should be able to travel anywhere and anytime, a significant number of people in the disability world feel that the Equality Act 2010 has been a backward step. The focus on disability has been lost, aggravated by the loss of a dedicated body (the Disability Rights Commission) focused on establishing case law and publishing good practice guidance … The major gap in transport is inadequate monitoring and enforcement. Although much of the basic accessibility provision is now in place through the construction requirements for rail and bus …. there is little effort going into making sure that accessibility features are consistently in place and working … audio and visual announcements on trains are one clear example."[420]

Trains: infrastructure and accessibility

276. When Keith Richards, the Chair of DPTAC, spoke at the Committee's seminar on 30 June 2015, he told us that in the initial design of Crossrail seven of the stations were not wheelchair accessible. We asked Crossrail for details. They explained that, although not all stations would have step-free access when their section of the line was opened, by December 2019, when the whole line was open from Reading and Heathrow in the west through the central tunnelled section to Abbey Wood and Shenfield in the east, all stations would have step-free access. This however is a relatively recent development. Transport for London told us that "just last year [2014] we were able to secure funding for seven stations along the route which were originally not going to be step-free, following considerable engagement with accessibility representatives, a huge achievement for all involved." The end result may be what is required, but we find it astonishing that, in the development of new rail infrastructure, retaining stations without step-free access could even have been contemplated. The Department for Transport, Network Rail and Transport for London must ensure that there is never again a prospect of new rail infrastructure being planned without step-free access being built into the design from the outset.

277. Much of the rest of the country lags behind London. David Redgewell, a much-travelled member of Bus Users UK in the South West region, listed a number of local stations in the Bristol area where there were problems. He thought the Great Western Railway electrification project was in danger of leaving some stations without disabled access. Despite this, his view was that First Great Western and South West Trains had been "very progressive in pushing for disabled access under the "Access for All" programme, but the money [was] very limited".[421] We received from JL Evans criticism of Northern Rail and Newcastle station announcements.[422] RNIB told us of problems with stations in Wales.[423]

278. Even where the infrastructure is supposedly in place, it is of little use when, as we heard, there are such problems as lifts out of order, ramps in the wrong place or no ramps at all, and absence of station staff, to name but a few. There is a long way to go, but some things have improved. Jonathan Fogerty,

420 Written evidence from the Disabled Persons Transport Advisory Committee (DPTAC) (EQD0094)
421 Written evidence from Bus Users UK South West (EQD0070)
422 Written evidence from JL Evans (EQD0114)
423 Written evidence from RNIB (EQD0164)

a tetraplegic wheelchair user whose evidence on enforcement problems we consider in Chapter 9, told us:

> "In the many years I have been a wheelchair user, I have seen changes in the social environment and improvements in access generally. By way of example, the first time that I travelled to London from Manchester by train I sat in the unheated guard's van with the bags of mail. I am now able to access a wheelchair space on the train and to travel in comfort with access to a wheelchair accessible toilet facility on board the train."[424]

Bus travel

279. In the case of travel by bus and coach, our evidence shows major variations in the attitude of different companies to the needs of disabled people. Mr Redgewell, again concentrating on the South West, told us that 90% of the time where buses were accessible he had easy access to the service; Stagecoach West had a disabled helpline and would provide a taxi in Gloucestershire when he was unable to board a bus. But he added: "The Government needs to do more in terms of grants to improve disabled access at bus stations especially at Gloucester (new scheme), Plymouth (new scheme), Weston Super Mare and Bristol (new scheme)."[425] He thought more support for infrastructure was needed, including talking bus stops, real time information and large print timetables. "Some of the worst councils for public transport delivery are Somerset (cuts in evening, Saturday and Sunday services) and South Gloucestershire where urban buses have been cut to save £600,000 including links to Cossham hospital and Filton Abbey Wood railway station without full public consultation or an equalities impact assessment."[426]

280. The picture which emerges is that, on the whole, in larger towns and cities the bus services for disabled people are usually adequate, in smaller towns they are variable, and in the countryside they are with few exceptions inadequate.

281. Conversion of buses to facilitate disabled access is often impracticable, and it of course takes time for a large rural fleet of buses to be replaced. But no one can pretend that there has not been adequate time. DPTAC explained that as long ago as 2000 the Public Service Vehicle Accessibility Regulations[427] (PSVAR) were made which included end dates by which all non-compliant vehicles should be withdrawn from service.

> "These 'end dates' were negotiated with the bus industry and were intended to reflect the working life of a bus so that there should be no wholesale withdrawal of buses which still have a number of working years ahead of them. The dates were phased over a 2-year period depending on the size of the bus. The first of these end dates was reached on 1st January 2015 at which point all single deck buses weighing less than 7.5 tonnes should have been compliant with regulations. From 1st January 2016 all single deck buses should comply with PSVAR and from 1st January 2017 all double deck buses should comply."[428]

282. DPTAC was concerned that the Government and the Driver and Vehicle Standards Agency (DVSA) had not been seen to be taking action during

424 Written evidence from Jonathan Fogerty (EQD0152)
425 Written evidence from Bus Users UK South West (EQD0070)
426 *Ibid.*
427 Public Service Vehicle Accessibility Regulations 2000 (SI 2000/1970)
428 Written evidence from the Disabled Persons Transport Advisory Committee (EQD0094)

2014 to alert the bus industry to the impending deadline. In March 2015 DPTAC was told that the DVSA had taken enforcement action against three operators who were continuing to use non-compliant buses, and that a number of other operators were being investigated. They wrote:

> "While we were encouraged that action is being taken in some cases it was not clear to us that the outcome was the replacement of non-compliant vehicles with those which do comply with the regulations … DPTAC recognises that many of these smaller single deck buses are used in rural areas with low profitability. Businesses that have not planned their capital investment programme may be put in financial difficulties if they are forced to replace significant numbers of vehicles at short notice. We don't want to see the PSVAR end dates result in loss of services."[429]

283. Like DPTAC, we would deplore a loss of services, but the responsibility is squarely that of the operators. They have known of these deadlines for 15 years. A failure to enforce them may give larger operators the impression that they need not be concerned about using larger non-compliant buses beyond the deadlines, the last of which will be reached at the end of this year.

284. FirstGroup say that they have invested heavily in new vehicles and that they are making "excellent progress" towards meeting the deadlines set by the PSVAR. They said that they work with groups and charities representing disabled people, and are working on improving audio-visual next-stop information.[430] This is encouraging, but we fear it may not be typical of all operators.

285. **Network Rail, TfL, train operators and bus companies should put more of their resources towards making their stations and vehicles more easily accessible to those in wheelchairs.** It should not need enforcement proceedings or the threat of such proceedings before operators comply.

286. **The Driver and Vehicle Standards Agency must enforce strictly the Regulations governing access to vehicles.**

Audio-visual annunciators

287. Terry Riley, the Chair of the British Deaf Association, gave us a vivid example of what it is like to travel without basic information: "Imagine you are standing on a train platform and you hear an announcement: "Sorry, the train is going from platform 15 rather than 13". As a deaf person … before I realise it, I turn around and everyone has left the platform because they are all on the train two platforms down, and I have missed it. … I have in fact missed two planes because there has been an announcement of a change of gate."[431]

288. And, of course, the problem is equally acute for the visually impaired where announcements are made only in visual form. Guide Dogs explained:

> "The lack of such announcements on buses is a major hindrance to people with sight loss, who use buses more than those who are not

429 Written evidence from the Disabled Persons Transport Advisory Committee (EQD0094)
430 Written evidence from FirstGroup plc (EQD0133)
431 Q 69 (Terry Riley)

> disabled, as their disability prevents them from driving a car … A recent report by Guide Dogs shows that 7 out of 10 bus passengers with sight loss have been forgotten by a bus driver who was asked to notify them when their stop was reached. For a sighted person, missing a stop is an irritating experience; for somebody unable to see, it is distressing, disorientating and sometimes dangerous."[432]

289. As with access to transport, things are better in the capital. Robert Wright, a former Head of the Coventry Service for Visually Impaired Children, wrote that "every bus and tube train in London 'talks' [an audible and (for deaf people) visual) signal] giving current location, next stop and the terminus. Provision of this facility in other parts of the country is extremely patchy."[433] Transport for All said in written evidence: "Outside London, few bus companies have installed audio-visual information on their buses (Talking Buses) although it only costs 1% of the cost of a new bus. Few buses have hearing loops. Two thirds (65%) of blind and partially sighted bus passengers have missed their stop in the last six months."[434]

290. Things are better with trains than with buses. In oral evidence the Chair of DPTAC, Keith Richards, said:

> "There is a requirement in the regulations that cover rail accessibility to have audio-visual information … It does seem to me very odd that there is not a mirroring in the bus regulations of what is in the rail regulations[435] … with local bus franchising, it makes absolute sense that if somebody is being given public money, or public approval, to operate something—and franchising is a public approval process—the give-back is that they have to prove they meet established good quality accessibility criteria, and not only that they meet them but that they continue to meet them and continue to improve; otherwise, there is no money, no approval and no franchise".[436]

The Discrimination Law Association and Guide Dogs both commented in their written evidence on the discrepancy between the Regulations governing trains[437] and buses.[438]

Retrofitting

291. Mr Richards' view was that on new rolling stock and new buses it makes absolute sense, and economic sense, to build in audio-visual annunciators.[439] Retrofitting, the fitting of annunciators to existing rolling stock and buses, is more expensive. To what extent cost is an inhibiting factor is a matter of dispute. Simon Posner, from the Confederation of Passenger Transport, told us that "one of the problems with providing audio-visual, which is an ideal way of going forward, is one of cost. It is a huge cost at the moment to retrofit vehicles …".[440] However Mr Richards said: "we have yet to see the evidence

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432 Written evidence from Guide Dogs (EQD0041)
433 Written evidence from Robert Wright (EQD0013)
434 Written evidence from Transport for All (EQD0116)
435 All the more so since DPTAC were consulted before the PSVAR were made.
436 Q 86 (Keith Richards)
437 The Rail Vehicle Accessibility Regulations 1998 (SI 1998/2456)
438 Public Service Vehicle Accessibility Regulations 2000, (SI 2000/1970). Written evidence from Discrimination Law Association (EQD0129) and Guide Dogs (EQD0041)
439 Q 87 (Keith Richards)
440 Q 94 (Simon Posner)

to show that it does cost as much as many bus operating companies say it costs to retrofit for example, audio-visual."[441]

292. Commenting directly on Mr Posner's evidence, Guide Dogs told us in supplementary evidence: "The campaign for audio-visual announcements does not call for retrofitting, but instead is to ensure all new buses are fitted with audio-visual announcements, as is the case for train and as was recommended by the Transport Select Committee in 2013.[442] This is to ensure it is affordable for bus companies, especially small operators who are more likely to buy buses second hand."[443]

293. **More resources should be devoted to providing annunciators on trains and buses which do not have them. No new vehicles should be put into service which do not have audio and visual annunciators. The Public Service Vehicles Accessibility Regulations 2000 should be amended accordingly.**

Training for bus and train staff

294. On 16 February 2011 the EU adopted a Regulation[444] to improve the carriage of passengers on buses and coaches in the EU. It came into force on 1 March 2013 and is directly applicable in the United Kingdom. Article 16(1) provides that carriers must establish disability-related training procedures, and ensure that all their personnel, including drivers, receive disability awareness training, and all personnel other than drivers receive training in assisting disabled people. However Article 16(2) allows Member States to exempt drivers from this provision for up to 5 years. In June 2012 the Department for Transport consulted about this exemption. They received 207 responses, 9 in favour of the exemption and 196 (including 182 in the form of a campaign by the RNIB) against. They decided to "continue to follow the Government's guiding principle to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts by making full use of all available exemptions."[445] This exemption therefore applies until March 2018.

295. Simon Posner, speaking for the Confederation of Passenger Transport, told us that for bus companies, unlike train operators, there is no requirement to have a disabled people's protection policy, but he added:

> "Each bus company takes that very seriously and puts in their own requirements to do so … Each bus driver has to go through [the Certificate of Professional Competence]. Items one and two are disability awareness training and customer awareness training … over 150,000 bus drivers and staff around bus stations have now been through that training, which is the great majority, if not all, of the staff there."[446]

441 Q 87 (Keith Richards)
442 Transport Select Committee, *Access to transport for disabled people* (Fifth Report, Session 2013–14, HC 116)
443 Supplementary written evidence from Guide Dogs (EQD0195)
444 Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004, OJ L55 of 28 February 2011.
445 Department for Transport, *Summary of Responses to the Government's consultation on EU Regulation 181/2011 on bus and coach passenger rights*, July 2012, p 4: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/86082/consultation-responses.pdf [accessed 15 March 2016]
446 Q 92 (Simon Posner)

296. Mr Richards (DPTAC) pointed out that in March 2018, when the exemption expires, "the inevitable is going to happen. Why not do it now?"[447] We agree. Within two years bus companies will have to have their drivers trained in accordance with the Annex to the Regulation. Where staff are inadequately trained, the impact on disabled people is felt now. We do not see how, with the possible exception of the coach companies which operate in the United Kingdom and mainland Europe, there is any way in which bus or coach companies can be placed at a competitive disadvantage. So why indeed not withdraw the exemption now?

297. In the case of the railways the position is better, but there is still no mandatory requirement for training up to a set standard. David Sindall, the Head of Disability and Inclusion at the Association of Train Operating Companies (ATOC), told us that "train operators are obligated to deliver disability equality training through something called the disabled person's protection policy. This falls out of the requirements in the Railways Act. All train operators deliver disability equality training of one form or another."[448] However he added that "ATOC has no power to instruct our members to go out there and train their staff, but we have a group—the ATOC disability group—which is … always looking for ways of improving training and sharing best practice in terms of what happens with training."[449]

298. **Training of all rail, bus and coach staff to a level agreed in consultation and set out in law is in our view essential. If no adequate level of training can be agreed, Ministers have power under section 22(2) of the Equality Act to make Regulations prescribing the level of training which is reasonable. They should be prepared to use these reserve powers if necessary, and to enforce the Regulations they make.**

Taxis

299. The importance of transport by taxis for disabled people scarcely needs to be emphasised. Rachel Crasnow QC, for the Bar Council, said that taxis were "a vital means of transport for many people with mobility problems."[450] As Elliot Dunster[451] pointed out, "taxis and private hire vehicles are not just issues for people with physical disabilities; people with mental health problems or learning disabilities or autism are much more likely to use taxis or private hire vehicles if they cannot use public transport for a variety of reasons."[452]

300. The Government agreed. In written evidence it described taxis and private hire vehicles (PHVs) as "a particularly valuable form of transport for disabled people."[453] In his oral evidence Andrew Jones MP, the Parliamentary Under Secretary of State at the Department for Transport, said: "I fully recognise that taxis, private hire vehicles and buses are of fundamental importance for disabled people. There is no question about that."[454]

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447 Q 83 (Keith Richards). The same point was made by Guide Dogs in their written evidence (EQD0041).
448 Q 92 (David Sindall)
449 *Ibid.*
450 Q 49 (Rachel Crasnow QC)
451 Group Head of Policy, Research and Public Affairs, Scope
452 Q 56 (Elliot Dunster)
453 Written evidence from HM Government through the Department for Education (EQD0121)
454 Q179 (Andrew Jones MP)

The provisions of the Act

301. Even before the DDA 1995 the Government's White Paper *Ending Discrimination against Disabled People*, said: "The door-to-door service which taxis provide makes them ideally suited for use by disabled people."[455] It is therefore surprising that the Bill that became the 1995 Act, as introduced in the Commons, did not contain any provisions for increased access to transport for disabled people, and in particular no provisions about transport by taxi. It was not until 15 June 1995, when the Bill reached Committee stage in the House of Lords, that the Government put forward the proposals for transport by taxi, in particular accessibility and carriage of assistance dogs, that became sections 32 to 39 of the DDA. They are now in Chapter 1 of Part 12 of the Equality Act. They have therefore been on the statute book for 20 years.

302. In moving the amendments on 15 June 1995 the Minister, Lord Mackay of Ardbrecknish, said that the provisions would apply "from days to be determined".[456] In the case of the most important of those provisions, 20 years later those days have yet to be determined.

303. Sections 168 to 171 of the Equality Act, which deal with assistance dogs, are in force, as are section 172 (appeals) and section 173 (interpretation). But the position on sections 160 to 167, dealing with the accessibility of taxis to wheelchair users, is different. The only one of these provisions fully in force is section 166, dealing with exemptions. Section 160, giving the Secretary of State power to make Taxi Accessibility Regulations, is not in force, so that no such Regulations have been made; nor are sections 163 and 164, which deal respectively with making taxi licences conditional on compliance with such Regulations, and with exemptions from such Regulations.

The failure to commence section 165

304. Section 165(4) of the Act imposes on taxi drivers and drivers of PHVs the following duties:

    (a) to carry the passenger while in the wheelchair;

    (b) not to make any additional charge for doing so;

    (c) if the passenger chooses to sit in a passenger seat, to carry the wheelchair;

    (d) to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort;

    (e) to give the passenger such mobility assistance as is reasonably required.

305. Section 165 applies to taxis and PHVs designated by a licensing authority under section 167. Section 166 allows drivers to apply for exemption from the duties imposed by section 165. Of these three sections, section 166 has been fully in force since 1 October 2010, but sections 165 and 167 are in force only "for the purpose of the issue of exemption certificates under section166".[457]

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455 HM Government, *Ending Discrimination against Disabled People*, Cm 2729, January 1995, p 30: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/272213/2729.pdf [accessed 11 March 2016]

456 HL Deb, 15 June 1995, col 2034

457 Equality Act 2010, Section 165

In other words, taxi drivers can apply for exemption from duties which do not apply and which, since their enactment 20 years ago, have never applied.

306. The Government's post-legislative memorandum gives no reason for the failure to commence the only provisions of section 165 which matter. In its written evidence the Government states: "The Government is considering the case for commencing Section 165 … we will have to consider very carefully how best to ensure that drivers are fully aware of the nature and extent of these duties."[458] In oral evidence Graham Pendlebury, the Director of Local Transport at the Department for Transport, said: "It is correct that we have not yet commenced Section 165. There were a number of reasons for that. It is under constant review. The concerns were really around burdens on drivers and whether this particular provision would fully meet the varied needs of different types of disabled people." [459]

307. Even before he gave oral evidence to us, on 25 November Andrew Jones MP wrote to the Chairman:

> "I can assure you that the Government is continuing to consider the case for commencing section 165 of the Equality Act. This Government is committed to reducing the amount of regulation we place on people, particularly small businesses, and making sure any regulation is absolutely necessary. Therefore, in this case we need to consider whether there are alternative ways of improving driver behaviour and the service the public receives before implementing legislation."[460]

When he gave oral evidence to us on 15 December 2015 we pressed the Minister on this issue, but the furthest he would go was to say: "I am quite supportive of the basic principle. We are at the moment considering what to do with this. We have considered it and I am hoping to make a decision very shortly."[461]

308. Many witnesses felt strongly about this issue. Rachel Crasnow QC asked "why it is that this particular strand of providers has been given carte blanche to ignore the provisions of an Act".[462] Lucy Scott-Moncrieff (Law Society) agreed with the Chairman that the failure to bring section 165 into force was "deplorable".[463] Doug Paulley wrote that the delay in implementing these sections had resulted in disabled people continuing to experience "significant barriers" in using taxis.[464] Transport for All described the failure to bring section 165 into force as "the most glaring gap", and continued:

> "wheelchair users up and down the country regularly report being refused a cab and 2 out of 3 wheelchair users say they have been refused a taxi. When wheelchair users in London report being refused, TfL only issue a warning to the driver and people who report being charged a higher fare are told it is a fair surcharge for an accessible vehicle. This is in stark contrast with penalties faced by drivers who refuse guide dogs,

458 Written evidence from HM Government through the Department for Education (EQD0121)
459 Q 81 (Graham Pendlebury)
460 Written evidence from the Department for Transport (EQD0186)
461 Q 179 (Andrew Jones MP)
462 Q 49 (Rachel Crasnow QC)
463 Q 49 (Lucy Scott-Moncrieff)
464 Written evidence from Doug Paulley (EQD0097)

> which include fines and having their licences revoked. Bringing Section 165 into force is long overdue."[465]

309. Douglas Johnson asked the very pertinent question:

> "Where the leadership is on this—which is a very important thing—from the Government's Equality Office and the Equality and Human Rights Commission? Surely those bodies should be taking a step forward to say, "This was passed by Parliament for good reason" … there is a failure of leadership there among those organisations that really should be driving that."[466]

310. The Minister was mindful of the need to reduce the burden of regulation on taxi-drivers; but we do not see that they can complain about the burden of converting their taxis to be wheelchair-accessible, since they have known for 20 years that this might happen. He preferred to consider "whether there are alternative ways of improving driver behaviour",[467] which ignores the fact that 20 years ago Parliament chose the way of statutory enforcement. But he also said that he was hoping to make a decision "very shortly".[468] We believe there is only one decision he can make.

311. **The reasons offered by the Government for failing to bring section 165 into force 20 years after its enactment are entirely unconvincing. Ministers should be considering the burden on disabled people trying to take taxis, not the burden on taxi owners or drivers. Section 165 and the remaining provisions of Part 12 of the Act should be brought into force forthwith.**

Training of taxi drivers

312. We have already emphasised the importance of regular disability training for the staff of rail, bus and coach operators. Training for taxi drivers is at least as important. The Law Commission dealt with this in its report on *Taxi and Private Hire Services*.[469] The enforcement route chosen by the Law Commission is through increased powers of the licensing authorities. This has also been suggested by our witnesses, and we deal with it in Chapter 10. We also deal there with the enforcement of other provisions of the Act relating to taxis.

Local transport problems

313. Some of the evidence we received from individual witnesses related to problems they had encountered in their localities. We received written evidence from Martin Phelps who, until it was wound up, was Management Committee Treasurer of the Lewisham Shopmobility Scheme. Under these schemes, mobility scooters and wheelchairs are hired to people with impaired mobility to access a town centre. In oral evidence to us Mr Phelps explained: "Most town centres … are becoming pedestrianised areas, and quite large pedestrianised areas, so that, if you are a disabled person who struggles to

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465 Written evidence from Transport for All (EQD0116)
466 Q 49 (Douglas Johnson)
467 Written evidence from the Department for Transport (EQD0186)
468 Q 179 (Andrew Jones MP)
469 Law Commission, *Taxi and Private Hire Services*, Cm 8864, May 2014, paras 12.40–12.41: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314106/9781474104531_web.pdf [accessed 3 March 2016]

walk 50 yards, being dropped off 200 yards away from the town centre and then negotiating a massive pedestrianised area is a real challenge."[470]

314. In relation to the Lewisham regeneration programme Mr Phelps wrote: "What concerns me is the lack of any attention paid to the needs of disabled people wanting to access the town centre."[471] He expanded on this in oral evidence:

> "When they did the redevelopment, there were some things they did that they should have known were going to have an impact on disabled people. They removed disabled parking bays, they took away the shelter that people use when they are waiting for the DialaRide, and they took away the stop so that they [disabled people] could no longer get there … now they have to be dropped off a couple of hundred yards away and cross a very busy road … They have moved the taxi rank … to a place where the pavement is so narrow and low that the taxi ramps that are built into the taxis do not work properly. These things all add up to making that whole area quite inaccessible."[472]

315. We believe it is usually a lack of awareness and forethought which results in local authorities often adding to rather than reducing the burden on wheelchair users and other disabled people. This emphasises the importance of consultation; local authorities must consult disabled people on a regular basis about the actions they plan, and act on what they are told.

Shared spaces

316. In a note issued in 2011 the Department for Transport defined a shared space as "a street or place designed to improve pedestrian movement and comfort by reducing the dominance of motor vehicles and enabling all users to share the space rather than follow the clearly defined rules implied by more conventional designs."[473] Mr Pendlebury told us that the Department was neutral about shared spaces, believing that they were a matter for local authorities, but said: "Evidence from around the world, including some continental cities, is that shared space can bring a lot of benefits. It creates places that are attractive, that people want to linger in, that create a more vibrant atmosphere and that generate economic growth."[474]

317. The Department acknowledged that "some disabled and older people can feel apprehensive about using the space, particularly where a level surface is used".[475] This came out clearly from the evidence we received. Guide Dogs were especially critical:

> "Controlled crossings (such as pelican crossings) and road markings are also often removed in order to reduce clutter and create ambiguity. The scheme relies on eye contact to negotiate priority, which automatically puts somebody who is unable to see at a disadvantage. … People with

470 Q 145 (Martin Phelps)
471 Written evidence from Lewisham Shopmobility (EQD0015)
472 Q 142 (Martin Phelps)
473 Department for Transport, *Local Transport Note 1/11 Shared Space*, October 2011 para 1.9: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/3873/ltn-1-11.pdf [accessed 16 March 2016]
474 Q 84 (Graham Pendlebury)
475 Department for Transport, *Local Transport Note 1/11 Shared Space*, October 2011 para 1.18: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/3873/ltn-1-11.pdf [accessed 16 March 2016]

> sight loss report that shared surfaces turn city centres into 'no-go' areas for them. Thus, by approving these schemes, local authorities are actively discouraging people with sight loss from participating in public life by preventing them from accessing civic centres."[476]

318. It is not just those with mobility issues (who may find level surfaces helpful) or those with sight loss (who find level surfaces difficult and potentially dangerous) who have issues with shared spaces. Rachel Smalley, an expert in housing policy and President of the Access Association, pointed out that "design standards need to take into account a range of impairments and disabilities, and that needs to include dementia, learning disabilities and mental health issues".[477]

319. Ms Smalley was concerned by the Department for Transport's view that shared spaces were a matter for local authorities:

> "For a lot of disabled people, including blind and partially-sighted people, national consistency is very important. The layout of tactile paving that you see at crossing points is nationally consistent so that a blind or partially-sighted person can go anywhere in the country and read and use the environment safely. The Department for Transport saying it is up to individual local government authorities or bodies to make decisions on this could create a patchwork effect of one solution being put in this city and another in that city."[478]

320. In March 2015 Lord Holmes of Richmond[479] launched a survey into Shared Spaces with a consultation on the web. His report, *Accidents by Design*, published July 2015, concluded:

> "Regardless of their mode of transport, disability status or gender, this survey found an overwhelming majority of respondents did not enjoy using shared spaces. This survey also found a third of respondents go out of their way to actively avoid shared space schemes. Respondents who did use them described feeling intimidated, anxious and frightened, not only for their own safety, but also for the safety of others … the results of this survey show that there is an urgent need for an immediate moratorium on shared space until there is more and better evidence about the impact of shared space schemes including an improved (central) record of accident data and a better understanding of the consequences of people literally designed out of these spaces."[480]

321. We believe that these criticisms are undoubtedly justified in relation to some shared space schemes, but although we appreciate the width of the consultation carried out by Lord Holmes, we believe that such schemes can be, and that some already are, designed to produce areas which are attractive to the majority without being unsafe for a minority. We share Ms Smalley's view that disabled people are entitled to consistency of design, and note that

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476 Written evidence from Guide Dogs (EQD0041)
477 Q 140 (Rachel Smalley)
478 Q 139 (Rachel Smalley)
479 Lord Holmes of Richmond is the Disability Commissioner of the EHRC, but his inquiry was carried out independently.
480 Lord Holmes of Richmond, *Accidents by design: The Holmes report on "shared space" in the United Kingdom (*July 2015) p 20: http://www.theihe.org/wp-content/uploads/2013/08/Holmes-Report-on-Shared-Space-.pdf [accessed on 4 March 2016]

the courts have already ruled against a local council which decided not to follow national guidance on tactile surfaces but to develop its own practice.[481]

322. Local authorities, in developing their schemes, must consult those who will be affected by them, and are of course bound by the PSED to have regard to the needs of disabled people—or to go further, if the recommendations in the following chapter are accepted by the Government. The disabled people who must be consulted include those who, as appears from the evidence we have quoted, have ceased to visit shared spaces because they are no longer confident enough to use them.

323. It is outside our terms of reference to make specific recommendations about whether shared spaces should proceed, and if so on what basis. However local authorities should not be acting independently without any central guidance. The Department for Transport's 2011 Note contains only a brief reference to the Equality Act, and where the problems of disabled people are dealt with, there is little specific guidance.[482]

324. **The Department for Transport should update its 2011 Local Transport Note to offer guidance to local authorities on how shared spaces schemes can best cater for the needs of disabled people. Local authorities should review existing schemes in the light of that guidance, make changes where necessary and practicable, and base any new schemes on that guidance.**

481 *Ali v London Borough of Newham*, [2012] EWHC 2970

482 Department for Transport, *Local Transport Note 1/11 Shared Space*, October 2011 paras 1.20–1.22 and 3.6–3.17: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/3873/ltn-1-11.pdf [accessed 16 March 2016]

CHAPTER 8: THE PUBLIC SECTOR EQUALITY DUTY

325. The public sector equality duty (PSED) was introduced by section 149 of the Equality Act 2010, which came into force on 5 April 2011. It replaced the existing duties in respect of race, disability, and gender equality. The first of these duties, the Race Equality Duty, came out of the 1999 Macpherson Report on the murder of the black teenager, Stephen Lawrence.[483] Up to that point, the emphasis of equality legislation had been on rectifying cases of discrimination and harassment after they occurred. The report revealed institutional racism in the Metropolitan Police, requiring a different approach to that traditionally taken by British anti-discrimination laws. Barbara Cohen explained that "for the very first time, the law was putting obligations on public authorities to take proactive steps to eliminate discrimination and advance equality."[484] This has been described as a "transformative" approach to equality.[485]

326. In 2005 the Disability Discrimination Act 2005 brought in the Disability Equality Duty (DED). The proactive approach was particularly suited to the social model of disability with its emphasis on the need to remove attitudinal and environmental barriers, and the duty followed a similar pattern albeit with some notable differences—not least its emphasis on the involvement of disabled people.[486]

327. In 2007 the Gender Equality Duty was brought into force. Even then it was known that a single duty was likely[487] and by 2009 the Equality and Human Rights Commission had produced integrated guidance on equality impact assessment covering not only the statutory duties in respect of race, disability and gender that were in law at the time,[488] but also, in anticipation of the Equality Act, sexual orientation, religion or belief, and age.[489]

328. The single public sector equality duty not only brought together the existing duties, but extended them to the other protected characteristics under the Equality Act. The technical guidance from the EHRC explains that the duty "is intended to accelerate progress towards equality for all, by placing a responsibility on bodies subject to the duty to consider how they can work to tackle systemic discrimination and disadvantage affecting people with particular protected characteristics."[490] As with the previous statutory duties, the general public sector equality duty is supported by 'specific duties' designed to enable 'better performance' of the general duty.[491]

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483 The Stephen Lawrence Inquiry, *Report of an Inquiry by Sir William Macpherson of Cluny*, Cm 4262–I, February 1999

484 Q 48 (Barbara Cohen)

485 Written evidence from the University of Leeds (EQD0125)

486 Written evidence from the University of Leeds (EQD0125)

487 Equal Opportunities Commission, *Gender Equality Duty Code of Practice England and Wales* (November 2006) Jenny Watson introduction.

488 The protected characteristics of gender reassignment and pregnancy and maternity were, at that time, to be considered under the Gender Equality Duty.

489 Equality and Human Rights Commission, *Equality impact assessment guidance: A step-by-step guide to integrating equality impact assessment into policy making and review* (November 2009): http://www.equalityhumanrights.com/sites/default/files/documents/PSD/equality_impact_assessment_guidance_quick-start_guide.pdf [accessed 4 March 2016]

490 Equality and Human Rights Commission, *Equality Act 2010: Technical Guidance on the Public Sector Equality Duty in England* (January 2013): http://www.equalityhumanrights.com/sites/default/files/documents/PSD/technical_guidance_on_the_public_sector_equality_duty_england.pdf [accessed 4 March 2016]

491 Equality Act 2010, section 153

Box 9: The General Duty

Section 149 of the Equality Act requires public authorities and those exercising public functions to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

These are referred to as the three 'aims' of the general duty. Importantly for disability, s. 149 (4) specifies that the duty includes taking account of disabled persons' disabilities and s. 149 (6) permits treating some persons "more favourably than others", as long as this does not involve conduct otherwise prohibited by the Act.

The duty applies to all public authorities and those exercising public functions—including ministers and government departments, local authorities, NHS trusts and other health and social services authorities, the armed forces and the police. The functions to be considered are not only employment and services, but also less obvious functions such as commissioning and procuring goods and services, or auditing, inspecting, and regulating others. Private or not for profit organisations contracted to deliver public functions, such as operating a prison, are also bound by the duty in respect of those functions.[492]

329. In May 2012, when the PSED had been in force for only a year, the Home Secretary announced, as part of the Red Tape Challenge, a review of the PSED and the Specific Duties Regulations[493]. The review was conducted by an Independent Steering Group which reported in September 2013. It concluded that implementation of the equality duty was patchy, often diverting resources from front-line services, and imposing burdens on the private sector. The review did not call for amendment of the Act, but recommended that public bodies should not collect diversity data unless this was necessary, they should reduce the burdens on small businesses, and they should adopt a proportionate approach to compliance, enforcement and the publishing of information. It also recommended a formal evaluation of the PSED in three years, i.e. in 2016.[494] As discussed in Chapter 3, the Government followed the review with a focus, quite possibly misplaced, on reducing what it viewed as "overcompliance".[495]

330. The inclusion of the PSED in the Red Tape Challenge was much criticised by witnesses. Action on Hearing Loss felt that it had "reduced the Act's

492 Equality and Human Rights Commission, *Equality Act 2010: Technical Guidance on the Public Sector Equality Duty in England* (January 2013): http://www.equalityhumanrights.com/sites/default/files/documents/PSD/technical_guidance_on_the_public_sector_equality_duty_england.pdf [accessed 4 March 2016]

493 Equality Act 2010 (Specific Duties) Regulations 2011. These are discussed further below at paras 347–361

494 Government Equalities Office, *Review of the Public Sector Equality Duty: Report of the Independent Steering Group* (September 2013): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/237194/Review_of_the_Public_Sector_Equality_Duty_by_the_Independent_Steering_Group.pdf [accessed 3 March 2016]

495 Q 9 (Charles M Ramsden), see para 103

importance in the eyes of employers and organisations".[496] Liz Sayce of Disability Rights UK thought that the "Red Tape Challenge has been unfortunate in terms of narrative. We had cross-party agreement on disability equality going back to the 1995 Act and a strong commitment to promoting disability equality and equality more broadly, and suddenly the Equality Act was positioned as something that was going to be burdensome."[497]

331. It is interesting to note that a review of the PSED in Wales, published in mid-2014, found limited evidence of over-compliance and that both the general duty and the Welsh specific duties "added value to … equalities work."[498]

Process or outcomes

332. The concept of 'due regard' is central to the public sector equality duty. The EHRC Technical Guidance describes it as meaning that "in making decisions and in its other day-to-day activities a body subject to the duty must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations." The duty is 'hard law': if a public authority cannot show that it has been met, its decision can be overturned on judicial review. How much regard is 'due' will depend on the circumstances but "the greater the relevance and potential impact, the higher the regard required by the duty."[499]

Box 10: Due regard in the case law

In the *Bracking* case the Court of Appeal reviewed the existing case law and set out in some detail the requirements of the due regard duty:

- The duty is on the decision maker personally and they must be aware of the duty; it cannot be delegated. What matters is what he or she took into account and what he or she knew.
- The duty must be fulfilled before and at the time a particular policy is being considered, and is a continuing one. A decision maker must assess the risk and extent of any adverse impact, and the ways in which such risk may be eliminated, before the adoption of a proposed policy.
- The duty must be exercised in substance, with rigour, and with an open mind. General regard to issues of equality is not the same as having specific regard, by way of conscious approach to the statutory criteria. Officials reporting to or advising a decision maker on matters material to the discharge of the duty must not merely tell them what they want to hear: they have to be "rigorous in both enquiring and reporting to them". This may require actively gathering additional information.

496 Written evidence from Action on Hearing Loss (EQD0128)
497 Q 22 (Liz Sayce)
498 Equality and Human Rights Commission Wales, *Review of the Public Sector Equality Duty in Wales* (July 2014) p 5: http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Review_of_PSED_in_Wales_Ex_Sum_english.pdf [accessed 3 March 2016]
499 Equality and Human Rights Commission, *Equality Act 2010: Technical Guidance on the Public Sector Equality Duty in England* (January 2013) para 2.20: http://www.equalityhumanrights.com/sites/default/files/documents/PSD/technical_guidance_on_the_public_sector_equality_duty_england.pdf [accessed 4 March 2016]

- Recording the steps taken by the decision maker in seeking to meet the statutory requirements is important evidence and it is good practice for a decision maker to keep records demonstrating consideration of the duty. While there is no duty to make express reference to the regard paid to the relevant duty, reference to it and to the relevant criteria reduces the scope for argument.
- The concept of 'due regard' requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, but if that is done, the court cannot interfere with the decision. The decision as to the weight to be given to equality considerations in the light of all relevant factors is for the decision maker.

Source: R (on the application of Bracking) v Secretary of State for Work and Pensions [2013] EWCA 1345

333. The bulk of our evidence criticised the duty for its reliance on the concept of 'due regard', the "non-specificity" of which allowed "some public bodies to apparently flout the spirit of the public sector equality duty."[500] Mind told us that public authorities were confused about what the duty means in practice, leading some to overlook the proactive requirements.[501] This was felt to have been exacerbated by the "dilution"[502] of the specific duties, which we discuss below, and by "Government comments about what equality impact assessment means and whether it is beneficial or required … it is becoming common to paraphrase 'due regard' as 'giving consideration to equality' even though case law indicates that the general duty 'requires more than simply giving consideration to the issue'".[503] Louise Whitfield, one of the solicitors for the claimants in the *Bracking* cases discussed below, felt that many public authorities were now taking the duties very seriously, but that this was not helped by confusion over the legal requirements.[504]

334. The problem was not, however, only one of understanding. If that were the sole problem, our recommendation to issue the EHRC's technical guidance on the PSED as a Code of Practice would be sufficient. Nick O'Brien, former Legal Director at the Disability Rights Commission, told us: "We now know that the due regard requirement has proven to be a little weak."[505] Professor Sandra Fredman QC, in an article quoted by Clive Durdle, wondered if use of the 'due regard' standard was truly "an attempt to incorporate a deliberative, reflexive approach to achieving equality" or if, in reality it reflected "a fundamental ambivalence as to the importance of equality issues".[506] At the heart of the problem was that, as the Master of the Rolls said in a case concerning a challenge to the 'bedroom tax' or 'spare room subsidy':

> "The PSED challenge is not concerned with the lawfulness or even the adequacy of the solution that was adopted. It is only concerned with the lawfulness of the process."[507]

500 Written evidence from Aspire (EQD0025)
501 Written evidence from Mind (EQD0147)
502 Written evidence from RNIB (EQD0164)
503 Written evidence from Mind (EQD0147)
504 Written evidence from Louise Whitfield (EQD0090)
505 Q 162 (Nick O'Brien)
506 Written evidence from Clive Durdle (EQD0048) citing Fredman S, The Public Sector Equality Duty, *Industrial Law Journal*, vol. 40, no. 4 (December 2011)
507 *R (on the application of MA & others) v the Secretary of State for Work and Pensions*, Equality and Human Rights Commission intervening [2014] EWCA Civ 13

335. This, it was argued, means that a Minister or public authority can choose to ignore the impact of a decision on disabled people.[508] The most commonly cited example of this was the judicial review of the decision of the Minister for Disabled People, in 2012, to close the Independent Living Fund (ILF). The case was successful at first instance and in the Court of Appeal,[509] but the Minister's successor carried out fresh consultation and also decided to close the fund. Andrews J decided that the Minister had considered all the matters he was required to take into account under the duty. Her conclusion was that his decision to close the Fund was therefore lawful.[510]

336. Commenting on that case, Jamie Grace, a lecturer and researcher in human rights law and administrative law, told us: "The PSED … can be a successful ground of judicial review which merely sees a public body required to return to its decision-making, only to re-make the same decisions".[511] Lucy Scott-Moncrieff for the Law Society said: "The trouble is that the wording of the duty is, frankly, weasel wording. It looks like it is saying one thing but actually it is saying something completely different."[512]

337. Given this context it is perhaps unsurprising that witnesses compared the PSED unfavourably to the Disability Equality Duty, the Code of Practice for which stated that:

> "It is important that public authorities use the disability equality duty to achieve outcomes, otherwise they are likely to find it difficult to establish that they have had due regard to the disability equality duty."[513]

338. Despite these reservations, witnesses still supported the PSED: Jamie Grace argued that "keeping the PSED essentially unadulterated is vital … given the lack of other powerful ways to challenge inequalities."[514] Barbara Cohen had seen community organisations use the duty to secure change without the need to litigate: "Someone comes in and says, for example, "They are about to close down this disability centre without looking to see the disability impact". There is an exchange of letters and the threatened action does not happen."[515] The National Aids Trust gave us an example of the positive impact using the duty could have:

> "The [Crown Prosecution Service] were attempting to charge an individual living with HIV with fraud for not disclosing their HIV status to their employer … We wrote to the CPS reminding them of … their obligations under the duty and highlighting how the charge would set back equality and good relations as they apply to people living with HIV. We had a very quick response from the CPS who agreed with the points we had raised, dropped the fraud charge immediately, and also committed to reminding CPS staff about their responsibilities under the duty and Equality Act more broadly."[516]

508 Written evidence from the Alliance for Inclusive Education (EQD0110)
509 *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 (generally known as 'Bracking 1')
510 *R (Aspinall) (formerly Bracking) v Secretary of State for Work and Pensions* [2014] EWHC 4144 (Admin) (generally known as 'Bracking 2)
511 Written evidence from Jamie Grace (EQD0028)
512 Q 48 (Lucy Scott-Moncrieff)
513 Disability Rights Commission, *The Duty to Promote Disability Equality: Statutory Code of Practice: England and Wales*, 2005, para 2.66
514 Written evidence from Jamie Grace (EQD0028)
515 Q 48 (Barbara Cohen)
516 Written evidence from the National AIDS Trust (EQD0136)

339. Louise Whitfield, while disappointed by the outcome of the *Bracking* case, felt that: "In my experience, once a public authority is forced to engage properly with the duty, they rarely take decisions that will be severely detrimental to disabled people if they are truly having due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations."[517] Baroness O'Neill, the Chair of the EHRC, defended the duty against those who think "that is a rather oddly vague duty, because it is a duty to have due regard". She had "come to appreciate that its power lies in the fact that you have to have due regard when you are making a decision. … If that duty is taken seriously—and there are some good examples of it being taken seriously—it has, potentially, a very salutary impact at just the stage of decision-making when you need it."[518]

340. Mind told us that:

> "When used proactively by public bodies in the way it was intended, there's no doubt the duty can lead to better services and save our public services money … by enabling informed decisions about policies and services that meet real rather than perceived need. It can also lead to fairer decisions about the allocation of resources and promote the delivery of public services which understand and meet the needs of the entire community."[519]

341. Mind nevertheless felt that "the specific wording of the Act may have encouraged a "tick-box" approach, with an "emphasis on procedure rather than outcome." They advocated replacing 'due regard' with an obligation to "take such steps as are necessary and proportionate for the progressive realisation of equality."[520] Disability Rights UK agreed, arguing that this reflected the phrasing found in the United Nations International Covenant on Economic, Social and Cultural Rights.[521]

342. The Discrimination Law Association and the Law Society took a similar approach.[522] Seeking to "ensure that the duty would not only require informed consideration of equality impact but actual steps towards the elimination of discrimination, the advancement of equality of opportunity and the fostering of good relations." They advocated supplementing the concept of 'due regard' with a provision stipulating that:

> "To comply with the duties in this section [section 149 of the Equality Act] a public authority in the exercise of its functions, or a person within subsection (2), in the exercise of its public functions, shall take all proportionate steps towards the achievement of the matters mentioned in (a), (b) and (c) in subsection (1)."[523]

343. The Secretary of State defended the lack of a requirement to take such proportionate steps, arguing that "we have to balance between people having due regard and thinking about the impact of what they are doing on those with protected characteristics; and making decisions and implementing rules and

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517 Written evidence from Louise Whitfield (EQD0090)
518 Q 31 (Baroness O'Neill of Bengarve)
519 Written evidence from Mind (EQD0147)
520 *Ibid.*
521 Written evidence from Disability Rights UK (EQD0105)
522 Written evidence from Discrimination Law Association (EQD0129) and The Law Society (EQD0163)
523 Written evidence from Discrimination Law Association (EQD0129)

changes which are going to take forward the programme of government."[524] She did not want further prescription as "the more we move to something that is prescriptive, the more red tape and tick boxes we end up encouraging, rather than Ministers standing back, having due regard and thinking about the impact of what they are doing on people with protected characteristics."[525] In contrast, Neil Crowther argued that "in the absence of … prescription, it feels like it has become more of a process-driven duty. That is a problem in itself, because you want public bodies to be creative in the way they respond to this."[526]

344. We agree with the Government intention to focus on outcomes over process. However, we believe that has been undermined by a lack of attention to the need for action to meet the duty and confusion among public authorities on whether this is even required. The question is not whether we move to a more prescriptive approach; it is how to move the focus onto actions and, ultimately, results. It is important that public authorities have the flexibility to determine how they meet the statutory aims of the public sector equality duty, and to balance them against competing factors, but doing nothing should not be an option. We agree with Nick O'Brien when he told us that the approach proposed by the Discrimination Law Association "would not … unduly fetter the discretion of public authorities; it would still give them considerable room for manoeuvre."[527]

345. **Our evidence has demonstrated that there is a fundamental flaw in the current Public Sector Equality Duty, namely that a public authority can make no progress towards the aims of the general duty and yet be judged compliant with it by the courts. We have heard convincing evidence that an amendment is needed to remedy this.**

346. **We recommend that a new subsection should be added to section 149: "To comply with the duties in this section, a public authority in the exercise of its functions, or a person within subsection (2) in the exercise of its public functions, shall take all proportionate steps towards the achievement of the matters mentioned in subsection (1)."**

The specific duties

347. The 'general duty' is supported by a set of 'specific duties'. While the general duty is the same across England, Wales and Scotland, the specific duties are a devolved matter. This has resulted in what Lord Low of Dalston termed "a patchwork of specific duties across the country."[528] The bulk of our evidence concerned the English specific duties, and we therefore consider the duties from that perspective.

524 Q 177 (Nicky Morgan MP)
525 *Ibid.*
526 Q 163 (Neil Crowther)
527 Q 162 (Nick O'Brien)
528 Written evidence from Lord Low of Dalston (EQD0165)

Box 11: The English Specific Duties

The Act enables the Secretary of State to make Regulations imposing further duties on public authorities, for the purpose of enabling better performance of the general equality duty. These are known as the 'specific duties' and are placed only on those authorities specified in the Act or in Regulations, known as 'listed authorities'.

The specific duties in England are set out in the Equality Act 2010 (Specific Duties) Regulations 2011.[529] There are two sets of requirements:

- The first set requires listed authorities to publish information to demonstrate their compliance with the general equality duty ('equality information').
- The second requires the preparation and publication of one or more equality objectives which the authority thinks it should achieve to do any of the things mentioned in the general equality duty ('equality objectives').

The unspecific duties?

348. The Government explained that:

> "The England-specific duties were designed to reduce the bureaucracy associated with earlier specific duties (which included action plans, annual reports, etc). The intention was to replace that process-focussed bureaucracy with outcome-focussed transparency, by encouraging public bodies to publish appropriate data showing equality outcomes."

They believed that this had not had an "adverse effect on the consideration of disability issues in the policy and decision making processes of public bodies" because "the general PSED continues to cover disability."[530]

349. The most obvious difference between these duties and those under the Disability Equality Duty (DED) is that they are significantly less specific. The DED required each listed authority to publish a Disability Equality Scheme, setting out how it intended to fulfil its general and specific duties and involving disabled people in its development. The scheme was required to explain: how disabled people had been involved in its development, how the authority planned to assess the impact of its work, and its arrangements for gathering and using information. An action plan was also required, setting out the steps the authority planned to take to fulfil the general duty. This plan had to be delivered within three years, and the authority was required to report on what it had done.

350. Witnesses drew a stark contrast between the English specific duties and those under the DED. The TUC were concerned that:

> "The specific duties legislation … only requires equality information to be published and for employers to identify 'at least one' equality objective across nine protected characteristics. There is no longer a requirement to publish a written disability equality scheme setting out what actions the public authority intends to take to promote disability equality and

529 Equality Act 2010 (Specific Duties) Regulations 2011 (SI 2011/2260)
530 Written evidence from HM Government through the Department for Education (EQD0121)

> there is no longer a requirement to involve disabled people in plans to promote equality."[531]

351. The Public Interest Research Unit wanted to see the duties under the DED, as "the strongest of the predecessor duties", brought back for all protected characteristics, viewing the current specific duties as "a pale reflection of the DED specific duties" and "so weak as to be of questionable relevance."[532] Equity felt that transparency and accountability were actually lower than in the past and called for "more prescriptive monitoring arrangements".[533] Thurrock Coalition, a user-led organisation seeking to improve the lives of older and disabled people living in Thurrock, told us about a tendency by public authorities to simply state that equality implications had been 'verified' without further explanation or detail.[534]

352. Some witnesses felt that the single equalities approach had, again, left disabled people with less protection: "the Disability Equality Duty … was much more effective in getting bodies to actively take steps to achieve disability equality. The dilution of the duty in terms of concrete requirements together with the impact of multiple strands appears to have stalled progress toward disability equality."[535] Lord Low felt that the PSED had "levelled down" from the Disability Equality Duty:

> "The Disability Equality Duty … was backed up by (a) detailed specific disability equality duties imposed by regulations, and (b) a statutory Code of Guidance produced by the Disability Rights Commission (DRC). Together these provided clear, detailed and specific guidance for public authorities on implementing the DED, and for the courts in ensuring that this happened. Much of this has been lost with the DED's replacement by the PSED."[536]

353. Essex County Council wanted to see greater transparency through a requirement to "publish outcomes of objectives before setting new objectives."[537] Sense wanted specific duties that "help public bodies to take proactive steps to comply with the general equality duty".[538] In contrast to the Government's view that there had been no adverse effect on the consideration of disability issues, the Discrimination Law Association's members reported "a detrimental effect on the inclusion of disabled people in planning services and in decision making and the resulting decisions." They consequently called for the reintroduction of "compulsory disability equality action plans".[539] This view was echoed by People First (Self Advocacy), Inclusion London and the RNIB.[540] Rachel Crasnow QC, speaking for the Bar Council, asked if equality impact assessment "was … just red tape that bodies found it annoying to comply with and wasted time and resources, or was it something which was a demonstration of how the duty had been

531 Written evidence from the TUC (EQD0055)
532 Written evidence from the Public Interest Research Unit (EQD0069)
533 Written evidence from Equity (EQD0064)
534 Written evidence from Thurrock Coalition (EQD0068)
535 Written evidence from the RNIB (EQD0164)
536 Written evidence from Lord Low of Dalston (EQD0165)
537 Written evidence from Essex County Council (EQD0039)
538 Written evidence from Sense (EQD0122)
539 Written evidence from the Discrimination Law Association (EQD0129)
540 Written evidence from People First (Self Advocacy) (EQD0134), Inclusion London (EQD0075) and the RNIB (EQD0164)

properly carried out and a check and a balance on all the requirements of the duty as laid down in statute"?[541]

354. The loss of the duty to involve disabled people dismayed many witnesses. Autistic UK felt that "discussions and arrangements in regard to meeting the Public Sector Equality Duty may now, it seems, be conducted behind closed doors".[542] The "omission of any specific duty on engagement was a particular loss for people with mental health problems" because the duty under the DED "ensured that their views would be heard."[543] The University of Leeds similarly regretted the "failure of the English Regulations to specify the need for public authorities to involve or engage with stakeholders when determining their equality objectives".[544] Nick O'Brien felt that this had "diminished the duty", because "empowerment and engagement of people in things that matter to them is probably the best way … of achieving universal vigilance."[545]

Wales and Scotland

355. Witnesses contrasted the English specific duties with those in Scotland and Wales. The Scottish and Welsh Governments took a substantively different approach to that of the Westminster Government. Lord Low felt that the English duties contrasted "very poorly" with those in Wales and Scotland which "require public authorities to:

- Set equality objectives and review them at least every four years;
- Collect information relevant to compliance with the duty;
- Involve and engage with people who have protected characteristics or those who represent them in order to comply with the general duty;
- Collect information on their employees, their employment practices and training provision;
- Consider whether to include award criteria and conditions relevant to equality when engaging in public procurement; and
- Report and publish information about compliance—in an accessible form."[546]

356. Rebecca Hilsenrath told us that in Wales "the specific duties give greater clarity in relation to the work of public authorities … We found that their consultation and engagement work had improved, and that was including the disability sector."[547] This clarity had reduced "the likelihood of under compliance or the tendency to over-comply due to uncertainty about what

541 Q 49 (Rachel Crasnow QC)
542 Written evidence from Autistic UK (EQD0170)
543 Written evidence from Mind (EQD0147)
544 Written evidence from the University of Leeds (EQD0125)
545 Q 162 (Nick O'Brien)
546 Written evidence from Lord Low of Dalston (EQD0165)
547 Q 33 (Rebecca Hilsenrath)

compliance means."[548] Mind reported that the Welsh approach had "led to better outcomes and a more embedded approach to equality."[549]

357. The Salvation Army, as a national body, found the differences in approach problematic: "The existence of different specific duties for each part of the UK is confusing both for individuals and for national organisations … operating across England, Scotland and Wales. For example under the specific duties, the requirement to assess the impact of new or proposed policies only applies in Scotland. This promotes an inconsistent approach to involvement and engagement which results, in some cases, in the needs of people with a disability not being met."[550]

358. Lord Low argued that the solution was that "the specific duty regulations … in England should be brought into line with those in Scotland and Wales."[551] This sentiment was echoed by Action on Hearing Loss and University of Leeds.[552]

359. While not perfect—Inclusion Scotland cited problems with public authorities' practice, as did RNIB Cymru[553]—the duties in Wales and Scotland do strike us as significantly closer to those under the Disability Equality Duty that disabled people praised, not least because they better meet the Government's aim of outcome focussed transparency. Witnesses particularly highlighted the importance of duties to involve disabled people and to develop and implement action plans. For such action plans to be effective, and transparency to be possible, equality data is also needed.

360. **We recommend that the Government replace the Equality Act 2010 (Specific Duties) Regulations 2011 with provisions that require a listed public authority to develop and implement a plan of action setting out how they will meet the requirements of the general duty in all of their functions.**

361. **Duties to involve disabled people in the development and implementation of actions, to collect and publish data to measure progress against the aims of the general duty, and to report regularly on progress should also be specified in the Regulations.**

Cumulative impact assessment

362. The question of the cumulative impact of Government decisions was raised repeatedly in our evidence, almost exclusively in relation to public spending decisions affecting disabled people.

548 Written evidence from Lord Low of Dalston (EQD0165) and Action on Hearing Loss (EQD0128) both citing Equality and Human Rights Commission Wales, *Review of the Public Sector Equality Duty (PSED) in Wales: Executive Summary*, 2014: http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Review_of_PSED_in_Wales_Ex_Sum_english.pdf.

549 Written evidence from Mind (EQD0147)

550 Written evidence from The Salvation Army (EQD0112)

551 Written evidence from Lord Low of Dalston (EQD0165)

552 Written evidence from Action on Hearing Loss (EQD0128) and the University of Leeds (EQD0125)

553 Written evidence from Inclusion Scotland (EQD0082) and RNIB, Appendix 1 (EQD0164)

Box 12: What is cumulative impact assessment?

Cumulative impact assessment techniques measure the overall impact of a set of changes to government policies (such as tax or welfare reforms, or changes to other public spending) on the UK population, analysed according to one or more characteristics (e.g. income level, age, family type, ethnicity, disability, and so on). Rather than looking at individual policy decisions in isolation, cumulative impact assessment helps government and the public to assess the overall impact of government policies on the population as a whole and on specific groups.

Source: Equality and Human Rights Commission, Research Report 94, Cumulative Impact Assessment: A Research Report by Landman Economics and the NIESR for the Equality and Human Rights Commission, Howard Reed and Jonathan Portes, Summer 2014, p. 5

363. Mencap had concerns "about the quality of impact assessment attached to major government policy changes" which had led to little consideration being given "to how to mitigate the negative consequences on protected groups, including disabled people."[554] Inclusion London argued: "The government urgently needs to conduct an assessment of the full impact of all cuts to support and social care for Disabled people because they are having a significant and disproportional negative impact on Disabled people."[555] This would "enable policy makers to have a much better understanding of the cumulative impact of welfare reform and public spending cuts has had on Disabled people".[556]

364. In 2010 the Equality and Human Rights Commission undertook a formal assessment of HM Treasury's 2010 Spending Review using its unique powers under section 31 of the Equality Act 2006. This assessed the extent to which the Government had met the (then) three public sector equality duties and considered whether improvements were needed. The assessment found a "serious effort" by Ministers and officials to meet their obligations, but also recommended improvements in transparency, data collection and sharing, advice and support to government departments, and the development of a common model of analysis. Further, it found that:

> "No one [within the Government] has any clear idea as to how these measures [in the 2010 Spending Review] will work together and what their combined impact on protected groups might be. Thus, an opportunity to make better policy and to mitigate impact is being missed."[557]

365. The EHRC therefore recommended that the Government "should consider formalising for spending decisions, the process of assessing cumulative impact".[558] In evidence to us, the Commission explained that it "strongly believes in the importance of understanding the cumulative or aggregate impact of policy and legislative changes as a means of driving improvements which will reduce the inequalities and entrenched disadvantage experienced by disabled people, many of which were highlighted as key challenges in our recent report, "Is Britain Fairer?""[559]

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554 Written evidence from Mencap (EQD0157)
555 Written evidence from Inclusion London (EQD0075)
556 *Ibid.*
557 Equality and Human Rights Commission, *Making fair financial decisions* (May 2012) p 22: http://www.equalityhumanrights.com/publication/making-fair-financial-decisions-assessment-hm-treasurys-2010-spending-review-s31 [accessed 3 March 2016]
558 *Ibid.*
559 Supplementary written evidence from the EHRC (EQD0190)

366. This view chimed with evidence from Fazilet Hadi of the RNIB who felt that:

> "Equality assessments on some level are probably done, but they are not robust enough, and because we still think of budgets in particular silos or buckets, government struggles to look at the overall picture, never mind the equality picture. If you cut in health, what does that mean for social care, and if you cut in social care, what does that mean for something else?"[560]

Is cumulative impact assessment possible?

367. We were told that the Treasury "does not accept the scope for doing cumulative impacts across government, partly because of the amount of control that spending departments have over financial allocations in practice and because of modelling limitations associated with benefits paid to households rather than individuals."[561] This contrasts with the position of the EHRC, who told us in oral evidence that:

> "Our view was that it was possible to work out whether there were respects in which people with particular characteristics or combinations of characteristics were going to be disadvantaged. That was not the view the Treasury took initially, but we disagreed about that."[562]

Seeking to demonstrate that this view applies as much to assessing cumulative impact as it does to individual spending decisions, the EHRC commissioned research "to explore the cumulative impact of tax, spending and benefit changes in 2010–15"[563]. This found that, while further work was needed, "modelling cumulative impact assessment by protected characteristic is both feasible and practicable."[564] Despite this the EHRC "as yet have had no positive feedback from Government to suggest they might start to carry out cumulative assessments."[565]

Box 13: Feasibility of cumulative impact assessment

Research by Landman Economics and the National Institute of Economic and Social Research, commissioned by the Equality and Human Rights Commission, demonstrated the possibility of cumulative impact of tax, welfare and other spending changes. It found that:

- modelling cumulative impact assessment by equality group is feasible and practicable;
- some such modelling was "by its very nature … experimental", with some issues with data and methodology remaining;
- a full picture requires examination of impacts both by income and by equality group, where possible in conjunction; and
- modelling the impact of tax and benefit changes is easier, both conceptually and in practice, than modelling the impact of public spending changes.

Source: Equality and Human Rights Commission, Research Report 94, Cumulative Impact Assessment: A Research Report by Landman Economics and the NIESR for the Equality and Human Rights Commission, Howard Reed and Jonathan Portes, Summer 2014

560 Q 23 (Fazilet Hadi)
561 Q 9 (Charles M Ramsden)
562 Q 37 (Baroness O'Neill of Bengarve)
563 Supplementary written evidence from the EHRC (EQD0190), referring to the Landman Economics report outlined in box 12
564 Supplementary written evidence from the EHRC (EQD0190)
565 *Ibid.*

368. Witnesses gave many examples of the impacts of spending decisions on disabled people. These included cuts to advice services,[566] the diminishment of legal aid,[567] the introduction of fees in employment tribunals[568] and reductions in the budget of the EHRC.[569] Access Officers had been lost[570] and cuts to public transport,[571] shopmobility schemes,[572] hearing aid provision,[573] social care,[574] mental health services[575] and support for disabled students[576] had all had an impact. Welfare and tax reforms to "both disability and non-disability"[577] benefits were a significant category in their own right, with witnesses reporting a disproportionate impact on disabled people.[578] Despite the apparent protection given to Disability Living Allowance (DLA) and its replacement Personal Independence Payments (PIP),[579] both Neil Crowther and the TUC argued that changes to eligibility under PIP had "caused hardship"[580] and a loss of independence.[581] In the light of this list we think that the conclusion that disabled people have been hit particularly hard is inescapable. Difficult decisions must be made, but they must also be done in a fair, transparent and accountable way.

369. We asked the Minister for Disabled People for his view. He described the Treasury's "cumulative distribution analysis" as "the most comprehensive that is available, covering not only the effects of direct cash transfers between households and government, but also the effects on frontline public service provision." However, it was "not possible to produce a cumulative impact assessment of policies on disabled people using this model". He added that "it is for Treasury to look at and work out how to do that".[582] Ms Morgan praised the impact assessment that had been published alongside the 2015 joint Spending Review and Autumn Statement, but she had not been made aware of the EHRC research by Landman Economics and NIESR.[583]

370. We looked at the equality analysis published alongside the 2015 joint Spending Review and Autumn Statement to see if this shed light on the concerns of witnesses. While welcome, the assessment was somewhat insubstantial, consisting of a 14 page document with 6 paragraphs on disability. The analysis lacked the kind of details on the impact that we would have expected to back up the statement in the document that decisions "had taken account

566 Written evidence from the Law Centres Network (EQD0135); Q 165 (Nick O'Brien)
567 Written evidence from Deaf Ex-Mainstreamers Group (EQD0150) and Disability Rights UK (EQD0105); Q 165 (Nick O'Brien) and Q 108 (Paul Breckell)
568 Written evidence from Discrimination Law Association (EQD0129) and Mind (EQD0147)
569 Disability Law Service (EQD0051), Q 74 (Dr Purton), Q 158 (Neil Crowther)
570 Q 135 (Councillor Jonathan McShane)
571 Written evidence from Hertfordshire Equality Council (EQD0120)
572 Written evidence from Lewisham Shopmobility (EQD0015)
573 Written evidence from Action on Hearing Loss (EQD0128)
574 Written evidence from Inclusion London (EQD0075)
575 Written evidence from Mind (EQD0147)
576 Written evidence from Disability Rights UK (EQD0105) and The National Deaf Children's Society (EQD0053)
577 Written evidence from Inclusion Scotland (EQD0082)
578 Written evidence from Inclusion Scotland (EQD0082), Pembrokeshire People First (EQD0057), The Public Interest Research Unit (EQD0069), National Deaf Children's Society (EQD0053) and Hertfordshire Equality Council (EQD0120)
579 Q 23 (Liz Sayce); written evidence from Disability Rights UK (EQD0105)
580 Written evidence from TUC (EQD0055)
581 Q 164 (Neil Crowther)
582 QQ 175–176 (Justin Tomlinson MP)
583 Q 175 (Nicky Morgan MP)

of the possible impacts on people with disabilities."[584] We do not see this as an adequate replacement for the type of cumulative impact assessment called for by witnesses, and are disappointed that the Ministers were not more ambitious in their expectations of the Treasury's efforts on equality.

371. Worryingly, we also heard that the Secretary of State for Work and Pensions had turned down an offer of assistance from the EHRC, who wrote to him in September 2015 offering practical suggestions to strengthen the equality analysis of the Welfare Reform and Work Bill. That Bill proposes, among other measures, significant changes to the benefits of disabled people within the 'Work-Related Activity Group' of the Employment Support Allowance.[585] The Secretary of State for Work and Pensions declined the EHRC's offer, instead stating his belief that the assessments already used "the most robust analysis available".[586] Unsurprisingly, the EHRC disagreed, and we share their concern that the resulting assessment lacks the necessary "depth" of analysis.[587]

372. Whilst we had no mandate to examine the effects of each individual spending decision, we do not agree with the Treasury that it is not possible to assess the cumulative impact of such decisions. Doing so would require effort, including on harmonising data sets, but that should not be beyond the ability of Government Departments. The ease of the exercise would be greatly increased by our recommendation to restore specific duties on the collection and use of data. **We recommend that the Government produce an assessment of the cumulative impact of budgets and other major initiatives on disabled people. It should be supported in this by the Government Equalities Office and the Office for Disability Issues.**

Government review

373. The 2013 review of the public sector equality duty discussed above recommended that the duty be reviewed again in 2016. The Secretary of State told us that: "We are currently working through that at the moment and deciding what any review might be."[588]

374. The planned review presents an opportunity for the Government to redress the unfortunate shift in tone on equality following the inclusion of the PSED, and the wider Equality Act, in the Red Tape Challenge. The Government will need to ensure that the review is able to command the confidence of disabled people, not least by involving them directly in the review and any decision making.

375. **We recommend that our findings and recommendations regarding the Public Sector Equality Duty form the basis of the planned Government review.**

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584 HM Treasury, *Impact on equalities: analysis to accompany Spending Review and Autumn Statement 2015* (November 2015) Para 2.16: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479720/Impact_on_equalities_SRAS_2015_final_25112015.pdf [accessed 4 March 2016]

585 Letter from Rebecca Hilsenrath to Rt Hon Ian Duncan Smith MP, Secretary of State for Work and Pensions, 16 September 2015: http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Parli_Briefings/276DuncanSmith.pdf [accesssed 17 March 2016]

586 Letter from Rt Hon Ian Duncan Smith MP, Secretary of State for Work and Pensions to Rebecca Hilsenrath, 13 October 2015: http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Parli_Briefings/2015–10-13%20SoS%20to%20R%20Hilsenrath%20-%20EHRC.PDF [accesssed 17 March 2016]

587 Equality and Human Rights Commission Briefing on the Welfare Reform and Work Bill; House of Commons Report Stage, 27 October 2015: http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/welfare-reform-and-work-bill-report-stage

588 Q 177 (Nicky Morgan MP)

CHAPTER 9: ENFORCEMENT THROUGH THE JUDICIAL PROCESS

Introduction

376. As we have said, the Disability Discrimination Act 1995, and subsequent legislation, for the first time gave disabled people important new rights, now enshrined in the Equality Act. Such rights are of little value unless they can be enforced. Ultimately the tribunals and courts are there for the enforcement of these statutory rights and other legal rights. However "no party will want [to go to a county court] unless it is absolutely necessary: it is time-consuming, costs-consuming, emotion-consuming and will result in the delayed resolution of something that ordinarily ought to be resolved quickly, efficiently and with the minimum of public exposure."[589] This is particularly true for litigants in person, and all the more so for disabled litigants. For the Bar Council, Rachel Crasnow QC said:

> "The way that equality rights, and in particular disability rights, have evolved up to today's date makes them extremely complex even for lawyers to understand and work with them. For anyone to suggest that courts and tribunals are now places where you should be expected to cope and argue your case without specialist legal advice, is simply to deprive those would-be users of the Equality Act of the scope of those rights."[590]

377. Barbara Cohen, speaking for the Discrimination Law Association, pointed out that "for claimants, individual litigation is not necessarily the best way to get good protection against discrimination."[591] We consider in the following chapter ways in which rights can be enforced while avoiding litigation. However where this is not possible, the first question is whether it is right, where there has been discrimination, for the burden of seeking redress to fall on the disabled person who has suffered discrimination; all the more so because, unlike most forms of litigation, proof of discrimination is in many cases likely to benefit other people in similar situations. This is the main reason why the State should do all it can to assist rather than obstruct the litigation process.

378. Three developments over the past three years have conspired to make such litigation more difficult: the imposition of tribunal fees, the reduction in the availability of legal aid, and procedural changes imposed under the Red Tape Challenge. We consider each of these, and look at other ways in which the enforcement of rights through the courts might be made less "time-consuming, costs-consuming, [and] emotion-consuming".[592]

Tribunal fees

379. Fees for bringing claims in employment tribunals were introduced for the first time by the Employment Tribunals and the Employment Appeal

589 The words of Foskett J describing county court proceedings in *R (on the application of Maxwell) v The Office of the Independent Adjudicator for Higher Education* [2010] EWHC 1889 (Admin), para78, cited by Mummery LJ in the Court of Appeal [2011] EWCA Civ 1236 at para 19. They were drawn to our attention by Unity Law in their written evidence (EQD0127).

590 Q 51 (Rachel Crasnow QC)

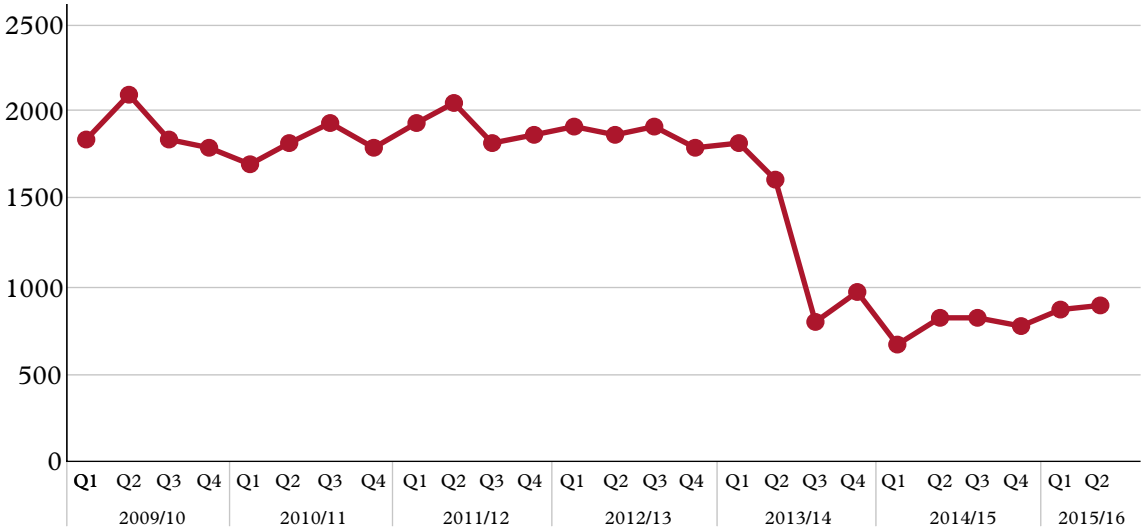
591 Q 46 (Barbara Cohen)

592 See para 376

Tribunal Fees Order 2013,[593] which came into force on 29 July 2013. Most claims, including claims for unfair dismissal or discrimination, attract an issue fee of £250 and a hearing fee of £950, a total of £1,200.

380. HM Courts and Tribunals Service produces quarterly statistics which cover all tribunals, including employment tribunals. In the quarter April–June 2013, the last full quarter before fees became payable, 44,334 claims were accepted by employment tribunals; the equivalent figure for the quarter April–June 2014 was 8,533, a fall of over 80%. The figures for employment tribunals are broken down further by type of claim, and the chart below shows the number of disability discrimination claims accepted each quarter between October 2012 and September 2015.[594] Disability discrimination claims form only a small proportion of the total, but the trend is the same, though not quite so marked: 1,619 claims were accepted in the quarter April–June 2013, and 828 a year later, a decrease of 49%.[595]

Figure 9: Disability discrimination claims received by employment tribunals



381. The Ministry of Justice, commenting on this in an earlier statistics bulletin, wrote: "The trend in single [employment tribunal] claims had been gradually declining for the last five years, but the rate of decline increased in October to December 2013. The fall in receipts for Employment Tribunals seen from October to December 2013 coincides with the introduction of Employment Tribunal fees in July 2013."[596] The Ministry did not go so far as to say that the introduction of fees caused the decline in claims, or even that it was a contributory factor, but it is inconceivable to us that it has not played a major part in the abrupt fall in the number of claims.

593 The Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 (SI 2013/1893)

594 Taken from the tables published with Tribunal and Gender Recognition Certificate Statistics Quarterly, July to September 2015

595 We are puzzled to know why, in their written evidence, the Law Society said: "The statistics do not give details on the number of disability discrimination cases. The Law Society is not aware if there is any breakdown of the data on the volume of applications brought before and after the application of fees, which might reveal that there has been a disproportionate reduction in the number of claims brought by disabled people." (EQD0163)

596 Ministry of Justice, *Tribunal and Gender Recognition Certificate Statistics Quarterly, January to March 2015* (June 2015) p 8: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf [accessed 4 March 2016]

382. The trend for appeals is the same. On 24 November 2015 Sir Brian Langstaff, the President of the Employment Appeal Tribunal (EAT), said in written evidence to the Commons Justice Committee:

> "Current caseload is approximately half of that which it was before the introduction of fees. Prior to fee introduction successive chronological years had shown a steady increase in the number of applications to appeal. Since, there has been the "cliff-face drop" shown above, almost immediately after the introduction of fees, and a further slow reduction in number … Our conclusion at the EAT from these figures is that if the introduction of fees is indeed the cause of the reduction in the number of applications to appeal, to the extent now of just over 50%, then first, for every one successful appeal that is now brought there would have been two had fees not been introduced—"good" appeals are being deterred; and second, there is now empirical evidence that fees have had no effect in deterring "bad" or "opportunistic" applications to appeal, as had been suggested in some quarters."[597]

383. If his claim succeeds, normally the appellant should get the tribunal fees and witness expenses back from the losing respondent. Provision for remission of fees also means that an applicant on benefits may not have to pay the fees at all. The Bar Council pointed out:

> "The Court of Appeal has commented that " … the class of claimant for whom the fees are said to be realistically unaffordable are not those on the lowest incomes, who will be entitled to full remission, but those whose incomes are such that they are entitled only to partial remission or are above the level at which remission ceases to be available".[598] Clearly a claimant whose claim may be relatively small, and who will probably have to represent themselves, is bound to think very carefully before risking £1,200 of their own money in order to follow up an alleged breach of an Equality Act right."[599]

384. The Bar Council also drew our attention to "the deep concern over this issue felt by the members of the specialist Bar Association, the Employment Law Bar Association (ELBA), who wrote to the Lord Chancellor and other MPs about fees on 16 March 2015. The ELBA fees letter was signed by 40 QCs and a little under 400 junior barristers who specialise in employment law."[600] These points were repeated subsequently in oral evidence. The Law Society told us: "More subtly—while we have no quantitative evidence for this—employment lawyers tell us that they are seeing employers who are "less careful" of the rights of employees (including those with disability) than they were prior to the introduction of fees. These employers correctly assess the risk of a claim as significantly reduced and behave accordingly."[601] Witnesses for the Bar Council, the Law Society, the Discrimination Law Association and the Law Centres Network all repeated their concerns in oral evidence.[602]

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597 Written evidence from Sir Brian Langstaff (FEE0110)
598 *R (Unison) v The Lord Chancellor, EHRC intervening* [2015] EWCA Civ 935, para 60 (26 August 2015). This point was also made by Lord Dyson, the Master of the Rolls, giving evidence to the Commons Justice Committee on 26 January 2016 (Q 271)
599 Written evidence from The Bar Council (EQD0161)
600 *Ibid.*
601 Written evidence from The Law Society (EQD0162)
602 QQ 43–51

385. The judgment of the Court of Appeal from which we quote in paragraph 383 was an appeal by UNISON in its two attempts to challenge the introduction of tribunal fees by judicial review. They were unsuccessful at first instance and in the Court of Appeal. The appeal was dismissed on the ground that the fees could not yet be shown to be preventing people from pursuing claims or appeals and the Fee Order was therefore lawful. The Court said that it would be a strong thing to strike down legislation on the basis of disputed predictions of its effect, but implied that if the adverse predictions proved to be justified, a fresh attempt might be made to strike down the Order, perhaps with a different result. On 26 February 2016 the Supreme Court granted UNISON leave to appeal.

386. **We recommend that HM Courts and Tribunals Service be required to collect from all county courts and from the Employment Appeal Tribunal, and to make publicly available, data relating to disability discrimination claims separately from other claims, as they do in employment tribunals.**

387. The Scottish Government has consulted on the removal of employment tribunal fees in Scotland, and on 1 September 2015 it announced that it will abolish those fees as part of the transfer of tribunals in Scotland to the Scottish Courts and Tribunals Service under the Scotland Bill.

388. On 11 June 2015 the Lord Chancellor announced a post-implementation review which would "consider how effective the introduction of fees has been in meeting the original financial and behavioural objectives while maintaining access to justice".[603] The fees are also the subject of an ongoing inquiry by the Commons Justice Committee. Without wishing to pre-empt their conclusions [CHECK against progress of inquiry in March], we ourselves have no doubt that the introduction of tribunal fees has had a significant negative impact on the ability of disabled people to access justice.

389. **We recommend that the Ministry of Justice, in its ongoing review of fees, act on the strong evidence that tribunal fees are unfairly obstructing discrimination claims under the Equality Act.**

The deterrent effect of costs

390. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force on 1 April 2013 and made severe cuts in the funding and availability of both criminal and civil legal aid. Prior to the entry into force of the Act, legal help was available in employment tribunals, e.g. for drafting documents, but legal aid for representation was not. It was however available in the Employment Appeal Tribunal and above. LASPO removed legal help from employment law altogether, but kept it for discrimination cases under the Equality Act. In consultation prior to the introduction of the Bill for LASPO the EHRC referred to "the chilling effect on access to justice for workplace-based discrimination cases, were employment law to be removed from the scope of legal aid"[604]—as it then was.

603 House of Commons Library, *Employment tribunals fees*, Briefing Paper, Number 7081, September 2015, p 28

604 Equality and Human Rights Commission, *Response of the Equality and Human Rights Commission to the Consultation on reform of legal aid in England and Wales*, February 2011, para 23: http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses/response-to-consultation-on-reform-of-legal-aid [accessed 15 March 2016]

391. Discrimination law in non-employment cases remains within the scope of legal aid. However, following the implementation of the LASPO reforms, most discrimination claimants are required to use the Community Legal Advice (CLA) Telephone Gateway service, operated by the Legal Aid Agency, as the first point of access for advice. Cases that pass the initial screening stage may be referred to one of three contracted specialist providers who can provide up to two hours' remote advice. Claimants can only obtain face-to-face advice if the specialist provider considers that they cannot be advised over the telephone or by email. The EHRC commented on the potential barriers presented by the gateway, particularly for disabled clients, including those with poorer mental health, or cognitive or learning impairments.[605] Mind referred to low levels of awareness of the gateway and issues with accessibility.[606] Issues with accessibility were also raised by the National Deaf Children's Society and Sheffield Citizens' Advice Law Centre. Other witnesses were also very critical of the telephone gateway as a means for disabled people to obtain advice.[607]

392. In 2014 the Commons Justice Committee carried out an inquiry into the effects of the Act. In written evidence the Law Centres Network stated that in the first year since the implementation of LASPO, nine Law Centres had closed, comprising a sixth of their membership (although one had since reopened and another had been newly established). The closures resulted from loss of legal aid funding combined with loss of funding from local authorities. The remaining Law Centres had seen a sharp increase in demand for services.[608]

393. Jeanine Blamires told us of her experiences trying to obtain legal advice:

> "We live in an area where accessible advocacy is hard to obtain. We have attempted to get help from Mencap, Disability Rights, the Equality Advisory and Support Service, Liberty and many others. Complex cases are not being put through because the money is not there to support organisations to take them on. Complex cases are being ignored by the Legal Aid Agency; they are too expensive."[609]

394. Douglas Johnson, from the Law Centres network, said: "There are precious few firms of solicitors in the country that will go anywhere near a discrimination case. That is why the [Equality] Act is not being enforced. It is simply not cost effective for most firms of solicitors to take that risk from a business sense."[610] Neil Crowther's conclusion was: "The big gap people identify is the question of remedy: the cost of going to employment tribunals … If there is one thing that would make a difference, it is to either eliminate or significantly reduce those costs and make access to remedy far easier."[611]

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605 Written evidence from the Equality and Human Rights Commission (EQD0083)
606 Written evidence from Mind (EQD0147)
607 Written evidence from Disability Law Service (EQD0051), and Louise Whitfield (a partner at Deighton Pierce Glynn, Solicitors) (EQD0090). See also the conclusions of the research of Legal Action Group quoted by the Law Centres Network in their written evidence (EQD0135), and a report by the Public Law Project quoted by the Law Society (EQD0162).
608 Written evidence from the Law Centres Network (EQD0135)
609 Q 167 (Jeanine Blamires)
610 Q 46 (Douglas Johnson)
611 Q 165 (Neil Crowther)

Qualified one-way costs shifting (QOCS)

395. With the exception of the Government, our witnesses were unanimous about the deterrent effect of the reduction in legal aid funding. One partial remedy which some of them proposed was an amendment to the Civil Procedure Rules (CPR).

396. Previously, where a claimant was not financially eligible for legal aid funding, disability discrimination claims could be funded through a Conditional Fee Agreement (CFA) with After-the-Event insurance (ATE). This effectively meant that, if the claim was successful, the defendant would pay the claimant's costs including the ATE premium; while if the claim was unsuccessful, the claimant would have to pay his or her own costs but was insured against paying the defendant's costs. However one consequence of LASPO is that ATE premiums are no longer recoverable from the defendant even if a claim is successful. Claimants are now responsible for paying the ATE premium out of any compensation they have been awarded, and these premiums can amount to thousands of pounds, and can dwarf the compensation awarded. The Discrimination Law Association said: "The fact that [these] premiums are now not recoverable from the defendant (and that these premiums are often likely to be a sizeable proportion or all of the value of an injury to feelings award) means that the costs of bringing a claim are almost always prohibitive."[612]

397. The abolition of the recoverability of ATE was one of the recommendations in Lord Justice Jackson's 2009 Review of Civil Litigation Costs. To address this problem, he recommended the introduction of Qualified One Way Costs Shifting (QOCS), meaning that if a claim is unsuccessful, the claimant is protected against paying the defendant's costs despite not having ATE. He recommended that this should apply to personal injury claims. He added:

> "The question then arises as to which categories of litigant should benefit from qualified one way costs shifting. This is a question upon which further consultation will be required … In my view qualified one way costs shifting may be appropriate on grounds of social policy, where the parties are in an asymmetric relationship."[613]

398. However Lord Justice Jackson's recommendation was confined to personal injury claims, and so were the amendments to the Civil Procedure Rules which came into force on 1 April 2013.[614] The new CPR rule 44.13(1) provides:

> This Section applies to proceedings which include a claim for damages– (a) for personal injuries; (b) under the Fatal Accidents Act 1976; or (c) which arises out of death or personal injury and survives for the benefit of an estate by virtue of section 1(1) of the Law Reform (Miscellaneous Provisions) Act 1934.

399. The Law Centres Network believe QOCS may already apply to discrimination claims.[615] Louise Whitfield sought "confirmation that the QOCS regime

612 Written evidence from Discrimination Law Association (EQD0129)
613 Lord Justice Jackson, *Review of Civil Litigation Costs: Final Report* (December 2009), chapters 9 and 19: https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Reports/jackson-final-report-140110.pdf [accessed 3 March 2016]
614 Civil Procedure (Amendment) Rules 2013 (SI 2013/262), rule 16 and Schedule
615 Written evidence from the Law Centres Network (EQD0135)

applies to disability discrimination cases".[616] A number of other witnesses thought that QOCS might already apply to discrimination claims, but believed there was uncertainty and sought confirmation.[617]

400. However the EHRC stated firmly that discrimination claims do not benefit from QOCS. We believe that at best, the application of QOCS to discrimination claims must be very doubtful. In CPR rule 44.13(1), claims for personal injuries are in the same category as claims under the Fatal Accidents Act. Moreover CPR rule 2(3), the general interpretation rule, includes this definition: " 'claim for personal injuries' means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person's death, and 'personal injuries' includes any disease and any impairment of a person's physical or mental condition."

401. There would however be no difficulty about applying QOCS to discrimination claims. Unity Law point out that this could be achieved simply by adding to CPR rule 44.13 (1): "(d) under section 114 of the Equality Act 2010".[618] This could be done when the CPR are next amended; amendments are made several times each year.

402. **The Civil Procedure Rules should be amended to apply Qualified One-Way Costs Shifting to discrimination claims under the Equality Act.**

The statutory questionnaire

403. We turn to two provisions of the Equality Act which have been casualties under the Government's Red Tape Challenge. Section 138 of the Act continued a provision for a questionnaire procedure that had been in the Sex Discrimination Act, the Race Relations Act and the Disability Discrimination Act. Under the procedure a potential claimant could serve a list of questions on a potential defendant, where they believed the defendant had contravened the Act or breached an equality duty. The questions could be used to obtain documents, statistical data, information on normal practice in a particular situation, and a pre-claim explanation for any adverse treatment, with sanctions for failures to respond or for equivocal or unsatisfactory answers. Replies were admissible in evidence in subsequent proceedings.

404. The intention, and the consequence, was that where, after a reply had been received, a claimant began court or tribunal proceedings, the issues would have been simplified and the litigation would perhaps be shorter and less costly. Where no proceedings followed, arguably this was because the issues had been settled to the satisfaction of the potential claimant. In their written evidence the TUC gave us an example.[619]

616 Written evidence from Louise Whitfield (EQD0090)
617 Written evidence from Doug Paulley (EQD0097), Unity Law (EQD0127), Bar Council (EQD0161), and Lord Low of Dalston (EQD0165), among others.
618 Written evidence from Unity Law (EQD0127)
619 Written evidence from the TUC (EQD0055)

Box 14: The statutory questionnaire procedure

A member with learning difficulties with long service at a major supermarket was dismissed from her checkout role on performance grounds without any consideration of reasonable adjustments. The union assisted the member in drafting a questionnaire and as soon as it was received by the employer, the employer's solicitors contacted the union and the case was settled. Without the questionnaire such an early settlement would not have been possible and additional costs would have been incurred by all parties and the tribunal service.

405. It was argued by the Government that the procedure was sometimes abused, and that employers were often asked for detailed information even if there was no intention to begin proceedings. As part of the Red Tape Challenge the questionnaire procedure was repealed by section 66 of the Enterprise and Regulatory Reform Act 2013. The Secretary of State told us that this change was made because "by 2009, it was estimated that nearly 10,000 businesses a year were having to respond to these questions at a cost of about £1.4 million per annum."[620]

406. While it is still possible for claimants to send questionnaires to potential defendants in advance of starting proceedings, the repeal of section 138 means that there is no longer any obligation on a potential defendant to reply within a particular time, or at all, and no adverse inference can be drawn from a failure to reply or a late reply.

407. The Discrimination Law Association, Disability Law Service, the Law Society, Mind and the TUC all argued against the repeal.[621] Barbara Cohen, giving evidence for the Discrimination Law Association, told the Committee that: "Sometimes [the people who are sent the questionnaire] come back and explain that what they did is not discrimination; you do not take it any further and that is the end of it. So in fact it helps to make sure that only the better claims go forward."[622] Douglas Johnson agreed, suggesting that the repeal of the procedure had inadvertently made the process of litigation more expensive:

> "[The repeal] does increase the costs of litigation when it goes ahead because the effect of the questionnaire procedure was to bring in at an earlier stage the provisions of disclosure of documents. … [the repeal] delays that process until later on, at which point all parties tend to have lawyers involved, and things become much more costly, much more contested and much more formal. It actually makes the whole process of litigation much more—and unnecessarily—expensive."[623]

408. In oral evidence, Dr Peter Purton, the Policy Officer for Disability and LGBT Rights at the TUC, told us how much they would welcome the reintroduction of the questionnaire procedure.[624] That was not unexpected. What was more surprising was that none of the three witnesses who saw things from an employer's perspective seemed to have been unduly concerned by the procedure. George Selvanera from the Business Disability

620 Q 183 (Nicky Morgan MP)
621 Written evidence from the Discrimination Law Association (EQD0129), Disability Law Service (EQD0051), the Law Society (EQD0163), Mind (EQD0147) and the TUC (EQD0055)
622 Q 44 (Barbara Cohen)
623 Q 44 (Douglas Johnson)
624 Q 72 (Dr Peter Purton)

Forum said: "Whether it is a questionnaire procedure or similar, they are mechanisms that take some of the emotion out of what is invariably a very sensitive and fraught process … There is value to having those sorts of processes in place."[625] The view of Mark McLane, Head of Global Diversity and Inclusion at Barclays Bank, was that "The work we are doing is to make certain that there are multiple avenues to bring forward a concern long before we would have to go into a questionnaire or a legal proceeding."[626] The witness who had the greatest reservations was James Lowman, from the Association of Convenience Stores, who told us: "Our members, especially smaller businesses without that head office HR function, can struggle and be intimidated by a questionnaire process that can take time". But he added: "We do not take a strong view on whether the questionnaire should be there or not, but that is the flavour of some of the practical issues for smaller businesses."[627]

409. The Government's Red Tape Challenge consultation found that some 77% of respondents favoured maintaining the statutory questionnaire procedure, but added: "the consultation did not reveal any empirical evidence to support these views."[628] We note, although the Government did not, that no empirical evidence was cited from businesses who wished to see section 138 repealed. Moreover the impact assessment accompanying the decision to repeal this provision made no attempt to assess the burden that would be placed on disabled people, or the number of proceedings which might never have been commenced if the claimant had had the information which the questionnaire would have provided. A fuller consultation might have persuaded the Government that the repeal would in fact benefit business very little, if at all, but would significantly harm a group of people already at a considerable disadvantage.

410. **The Government should reinstate the statutory questionnaire procedure.**

Tribunals' powers to make wider recommendations

411. The second victim of the Government's Red Tape Challenge was the provision giving tribunals the power to make recommendations to a respondent who had lost a discrimination claim. Previously these had been limited to recommendations directed at reducing the adverse effect of an act of discrimination on the complainant. The Act broadened this, enabling tribunals to make recommendations impacting on all of an employer's staff—such as that an employer update their policies to take account of the Equality Act, or that relevant staff undertake diversity training. Such recommendations might further the Government's policy of increasing the employment of disabled people.

412. This measure came into force on 1 October 2010, but was repealed with effect from 1 October 2015 by section 2 of the Deregulation Act 2015 as part of the Government's wider programme of deregulation. The Post-Legislative Memorandum on the Equality Act explains that:

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625 Q 72 (George Selvanera)
626 Q 72 (Mark McLane)
627 Q 72 (James Lowman)
628 Government Equalities Office, *Impact Assessment of removing the provisions in the Equality Act 2010 on the obtaining information procedure*, (August 2012) p 4: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136233/ia-obtaining-information.pdf [accessed 15 March 2016]

> "Following the Red Tape Challenge on Equalities, the Coalition Government concluded that this power was unnecessary and unenforceable. It took the view that employers who lose a discrimination case often take such actions themselves in the interest of avoiding similar cases being brought against them in the future and those employers who are unlikely to take such remedial action are also unlikely to adhere to a wider recommendation. Furthermore, as the power did not include legislative sanctions, the tribunals could not enforce their suggested recommendations."[629]

413. In support of this, the Secretary of State told us: "When the Government Equalities Office wrote to employers who had received a wider recommendation from tribunals, those that replied indicated an average compliance cost of about £2,000."[630] We do not know how many had been asked, or what proportion replied.

414. The repeal of the power was cited with regret by Action on Hearing Loss, the Association of Colleges, the Disability Law Service, the Equality and Human Rights Commission, Law Centres Network, the Law Society, National AIDS Trust, Sense and the TUC.[631] All argued that repeal of the power had damaged the ability of tribunals to have a longer-term impact on the extent of discrimination in society. The TUC argued:

> "One of the criticisms of the power made by the Coalition Government was that any recommendations made lacked force. This was a criticism the TUC made when the power was first proposed in [Equality Act] 2010 and could have been remedied by introducing stronger enforcement mechanisms for recommendations rather than repealing the power altogether."[632]

415. We agree that a more useful amendment to the law would have been to make such recommendations enforceable, rather than repeal the power to make them. A recommendation relating to the complainant can be enforced by making or increasing a compensation payment. An increase in the claimant's compensation payment as a sanction for a failure to implement recommendations relating to others might have the required effect, though it might also constitute an undeserved bonus for the complainant.

416. **We recommend that the Government restore the power of tribunals to make wider recommendations with a view to preventing discrimination experienced by the claimant from happening to others.**

Remedies in the courts

417. Despite the fees, despite the costs, despite the complexity of the statutory provisions and the case-law, despite the complication of tribunal and—even

629 Government Equalities Office, *Memorandum to the Women and Equalities Select Committee on the Post-Legislative Assessment of the Equality Act 2010*, Cm 9101, July 2015, p 29: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441841/Memo_to_Women_Equalities_-_print.pdf [accessed 3 March 2016]

630 Q 183 (Nicky Morgan MP)

631 Written evidence from Action on Hearing Loss (EQD0128), the Association of Colleges (EQD0073), the Disability Law Service (EQD0051), the Equality and Human Rights Commission (EQD0083), Law Centres Network (EQD0135), the Law Society (EQD0163), National AIDS Trust (EQD0136), Sense (EQD0122) and the TUC (EQD0055)

632 Written evidence from the TUC (EQD0055)

more—court procedure, it is still possible for disabled people to bring cases on their own and, often, to win. We took oral evidence from two disabled people who have done just that.[633]

418. Doug Paulley is a wheelchair user living in a care home for people with physical impairments, and has both direct and vicarious experience of the barriers disabled people face when attempting to enjoy the same opportunities and experiences as non-disabled people. He has instituted over 40 cases for disability discrimination in the provision of services under the Equality Act. All but three of these were as a litigant in person. Most have been settled by consent either pre-issue or pre-judgment, but a number have gone to judgment.

419. Mr Paulley is currently engaged in litigation against FirstGroup, a bus company, about access by wheelchair users to the space set aside for them on buses. This is a case which has attracted a great deal of interest. Mr Paulley won in the county court, but the company's appeal to the Court of Appeal was successful. The case is currently on appeal to the Supreme Court, so we say no more about it.

420. Jonathan Fogerty is a tetraplegic following a spinal cord injury in 1988 when he was 14 years old. He has paralysis from the chest down and no lower limb function. He qualified as a solicitor in 1999 and has practised in personal injury compensation cases since qualifying. He has taken four cases through the Small Claims Court alleging discrimination on the grounds of disability where a service provider has failed to make a reasonable adjustment and not provided wheelchair access. He told us that he has also pursued complaints by way of written correspondence with a service provider, a number of which have resulted in an out of court settlement.

421. For everyone, but particularly for people like these, HM Courts and Tribunals Service should live up to its name as a service provider. Mr Paulley told us: "I have sued the Court Service three times for disability discrimination, reaching binding out-of-court agreements in two cases and winning the third. In every case, court staff were unaware of their obligations as a service provider. Court employees' reactions when I have requested an adjustment or aid gives me the impression that the Court Service has very few disabled service users."[634] This is highly regrettable, but we were glad to hear that it is not always the case. Jeanine Blamires told us that the county courts "are the best example I have of a service that is prepared to bend over backwards to ensure reasonable adjustments are in place to enable equal access to the court. With the help of the Personal Support Unit I provided them with a letter of my needs in court and they provide them."[635] And in supplementary evidence she and her husband David wrote: "Attitude makes a big difference, court staff at Skipton County Court, Bradford Magistrates Court and Leeds Combined Court are extremely helpful and considerate and have done everything in their power to enable good access."[636] We congratulate the staff of those courts, and hope that all court staff will model their conduct on this.

633 QQ 97–104
634 Written evidence from Doug Paulley (EQD0097)
635 Written evidence from Jeanine Blamires (EQD0171)
636 Written evidence from David and Jeanine Blamires (EQD0197)

Injunctive relief

422. Damages alone are often not enough; the cause of the discrimination needs to be addressed. An example is the case of *Allen v Royal Bank of Scotland Group Plc.* The claimant was a wheelchair user and was unable to access the main branch of his bank in Sheffield. This would have been possible if a platform lift had been installed but the bank declined to do so, not directly on grounds of cost, but because the space required would have resulted in the loss of an interview room. The judge in the county court[637] awarded the claimant £6,500 for injury to feelings. This alone would however still have left him unable to access the banking facilities he needed. The judge further ordered the bank to install a platform lift within nine months.

423. The ability of county courts to issue injunctions is a powerful tool. Sadly, it appears to be little known among disabled people, and sometimes their legal representatives.[638] Mr Fogerty told us of litigation against a restaurant which was inaccessible to him. He was awarded damages, but he did not ask the court to grant an injunction, and "the restaurant remains as inaccessible today as it was two years ago."[639] He regretted not having applied for an injunction. We believe documents issued by the courts and others relating to discrimination litigation need to give more prominence to the ability of the courts to grant injunctions in appropriate cases. Such documents will however need to stress that, particularly in cases concerning physical barriers, this will require expert evidence and likely allocation to the fast or multi track of the court. Such applications will not be easy without legal representation.

Intervention by the EHRC

424. The EHRC has wide powers of enforcement, which include the power to institute or intervene in legal proceedings (including judicial review)[640] and the power to assist an individual who is or may become party to legal proceedings with advice and costs.[641] Its use of these powers was criticised by, among others, the Discrimination Law Association, in particular for not doing more to assist individual litigants, and for not intervening more in first instance cases.[642] Rachel Crasnow QC, speaking for the Bar Council, made the same point: "By only stepping in at a late stage in the proceedings, sometimes a lot has been lost because arguments have not been explored when fact findings have taken place in important cases lower down."[643]

425. We put these criticisms to the EHRC. In their response, they argued that "supporting an appellate case may make a better use of limited public resources". They explained:

> "Supporting a first instance case generally requires considerably more funding or resource than an appellate case. This is because the facts and credibility of the witnesses have yet to be determined by the court. An employment discrimination complaint is frequently listed by the Employment Tribunal for a hearing of between 10 and 15 days.

637 The judgment was affirmed by the Court of Appeal, [2009] EWCA Civ 1213 (20 November 2009).
638 Q 102 (Jonathan Fogerty)
639 *Ibid.*
640 Equality Act 2006, section 30
641 *Ibid.*, sections 28 and 29
642 Written evidence from the Discrimination Law Association (EQD0129)
643 Q 50 (Rachel Crasnow QC)

> Moreover, at appellate level, the Commission will recover its costs if successful, whereas it will often recover no costs for first instance cases. The Commission is therefore able to stretch its budget to more appellate than first instance cases. Even if successful, a first instance case does not result in a binding legal precedent."[644]

426. Additionally, they pointed out that between 80% and 90% of first instance cases settle, and since most respondents demand a confidentiality clause in the settlement agreement, "the substantial legal resources deployed in reaching a settlement frequently amount to months of work and do not provide any public benefit."[645]

427. We believe these are valid points, and are content that the EHRC, faced with limited resources, should decide where they are best employed.

Class actions

428. Plainly, one way of relieving the burden on individual litigants is for them to be able to join with others with similar legal interests in a single action, possibly assisted by an organisation supporting their interests. This, as the Discrimination Law Association and the Law Centres Network pointed out to us, is something they can already do:

> "The [Employment Tribunal] jurisdiction allows for group actions and this has been used in equal pay litigation. This is still dependent upon each and every claimant filing a valid claim to the ET, and the ET determining each one, although it does enable representative litigation, where points common to all cases are identified and litigated. In the County Court a group action, similarly requiring every claimant to file a separate claim, is possible by way of a Group Litigation Order under CPR 19.11. In our experience this rarely occurs, given that it is so difficult to bring an individual case, never mind a group claim."[646]

429. Representational groups can bring judicial review proceedings in matters in which those they represent have an interest, even though the decision being reviewed may not impact on an individual. They can also intervene in judicial review proceedings, though they will have to be mindful of the provisions of section 87 of the Criminal Justice and Courts Act 2015 which, from 13 April 2015,[647] prohibit the court from ordering an applicant or defendant to pay the intervener's costs (save in exceptional circumstances), and may require the court to order the intervener to pay the costs of another party where the intervener has acted, in substance, as the sole or principal applicant, defendant, appellant or respondent, or where the interventions have not been relevant or not been of assistance to the court.

430. But in contrast to judicial review, representational groups cannot pursue claims in similar circumstances, and a number of organisations would like to be able to do so. The RNIB said in their written evidence: "It would also be helpful for disability organisations to be able to pursue claims that affect

644 Supplementary written evidence from the Equality and Human Rights Commission (EQD0200)
645 *Ibid.*
646 Supplementary written evidence from the Discrimination Law Association and the Law Centres Network (EQD0203)
647 Criminal Justice and Courts Act 2015 (Commencement No. 1, Saving and Transitional Provisions) Order 2015 (SI 2015/778)

their constituents as a class"[648], and in oral evidence Fazilet Hadi said: "If the RNIB knew that 90 blind people were prejudiced by some new shared space scheme somewhere, we could not step in."[649] The Manchester Disabled Peoples Action Group thought that "An important addition … would be to enable groups, not just individuals, to take legal action against service providers and public bodies which are in breach of recognised national standards and guidance, and for groups to act as advocates for individuals who are not confident in making complaints or taking cases to courts on their own."[650]

431. The Discrimination Law Association pointed out that a class action, in the sense that it is used in America, is not possible in our courts for discrimination claims.[651] They added: "The DLA and the [Law Centres Network] do not currently have a view on whether or not the introduction of some form of class action process for litigation would be of benefit in discrimination cases or not … the present rules allow individuals with the same or essentially the same interest or concern to bring action as a group in any event (see the provisions for multi-party actions in the ET as used in much equal pay litigation for example)."[652]

432. We referred in Chapter 2 (paragraphs 87–92) to the draft EU Directive on the accessibility requirements for products and services, published by the Commission on 2 December 2015. Article 25 would require Member States to have in place what is essentially a class action enforcement procedure.

Box 15: Draft EU Accessibility Directive, Article 25

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.

2. The means referred to paragraph 1 shall include … (b) provisions whereby public bodies or private associations, organisations or other legal entities which have a legitimate interest, in ensuring that the provisions of this Directive are complied with, may take action under national law before the courts or before the competent administrative bodies on behalf of consumers to ensure that the national provisions transposing this Directive are complied with.

433. There is no guarantee that this provision will survive the negotiating process in that form or at all; and, if it does, it may be thought that judicial review is an "adequate and effective means" of ensuring compliance with the Directive. We believe however that the Government should give serious consideration to allowing some form of class action in discrimination cases.

434. **The Government should consider changing the law to allow charities and other bodies which do not themselves have a legal interest to bring proceedings in the interests of classes of disabled people who are not themselves claimants. This would enable them to remedy**

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648 Written evidence from the RNIB (EQD0164)
649 Q 25 (Fazilet Hadi)
650 Written evidence from the Manchester Disabled Peoples Action Group (EQD0092)
651 In England and Wales, a US-style class action has just become possible under the Consumer Rights Act 2015 limited to cases suitable to be heard by the Competition Appeal Tribunal.
652 Supplementary written evidence from the Discrimination Law Association and Law Centres Network (EQD0203)

action already taken by a public authority or to prevent anticipated action.

Dual discrimination

435. Many disabled people have other protected characteristics, and discrimination may be based on two or more such characteristics. We referred in Chapter 2 to the Government's failure to bring into force section 14 of the Act, which would allow a person discriminated against because of a combination of protected characteristics to prove this without having to show that the conduct complained of amounted to direct discrimination because of each of the characteristics taken separately.

436. Many witnesses, including the DLA, the EHRC and the Law Society, argued that section 14 should be brought into force.[653] Only the Government thought otherwise, stating in paragraph 3.42 of its Memorandum on the Act that there is "insufficient evidence that [section 14] was needed and concerns that it represented an unnecessary burden to business since the current legislation already provides sufficient protection for individuals. Individuals can submit two or indeed multiple claims, each involving a different protected characteristic, in relation to the same alleged incident."

437. We asked why it was more of a burden to businesses to defend one claim relating to two characteristics, rather than two claims each relating to one characteristic, when they arise out of the same incident. The Government replied: "It will be more of a burden because individuals will tend to bring the dual discrimination claim *in addition* to both single-strand claims, so there will be three claims rather than two. There is nothing in the Act to prevent this happening, and tribunal fees apply per claim,[654] irrespective of how many grounds that claim is made on, so there would be a clear incentive to expand a claim in this way."[655]

438. We do not accept this argument. It is precisely because "single-strand claims" on two individual grounds might fail that the Act allows a claim for dual discrimination to be brought—or would do if section 14 was in force.

439. **Section 14 of the Act on dual discrimination should be brought into force forthwith.**

The fact or degree of disability

440. The Equality Act 2010 broadened the definition of disability with the intention of making it easier for an individual to demonstrate that they meet the definition of disability. We are therefore concerned to receive evidence that disabled people are being challenged to 'prove' their disability before they are able to put forward evidence of discriminatory treatment, even though the fact of their disability is not open to question. Andrew Brenton told us:

> "The other thing that happened to me was their main line of defence was, "You are not disabled". Despite providing them with a lot of evidence, the university taking money to provide services for my disability—I had

653 Q 51 (Barbara Cohen), Q 29 (Baroness O'Neill of Bengarve); written evidence from the Law Society (EQD0162) and supplementary written evidence from the Equality and Human Rights Commission (EQD0145)

654 The fee applies for each form ET1, which may include more than one claim on more than one ground.

655 Supplementary written evidence from the Government Equalities Office (EQD0173)

> a disabled students' allowance, a disabled students' needs statement, at the time I was in receipt of disability living allowance at medium rate care and full rate mobility—their first line of defence was, "You're not disabled. You've got to prove you're disabled". It adds a further layer of harm."[656]

441. A court, when deciding what costs order to make, has a discretion under CPR rule 44.2(5)(b) to take into account "whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue". If the defendant raises as a defence the fact or degree of the claimant's disability, and the disability is proved to the satisfaction of the court, we hope that in appropriate cases claimants will invite the court to make use of this power.

442. Similarly, employment tribunals have the power to award costs when a party has acted vexatiously, abusively, disruptively or otherwise unreasonably either in bringing the proceedings or in the way that the proceedings have been conducted.[657] We hope that in appropriate cases claimants will invite the tribunal to make use of this power.

Reforms of the civil courts

443. In July 2015 the Lord Chief Justice and the Master of the Rolls commissioned Lord Justice Briggs to carry out a review of the structure of the civil courts. The Civil Courts Structure Review: Interim Report was published on 12 January 2016. It is not therefore a matter on which we have received any evidence, but there are two matters we should briefly mention.

444. In Chapter 6 of the Interim Report, Lord Justice Briggs put forward the possibility of an Online Court for claims up to the value of £25,000. He considered the arguments which have been put for excluding from the Online Court claims for personal injury, and his "provisional view is that, subject to two aspects, the exclusionists currently have the stronger case."[658] There is however no specific mention of disabled claimants, or of the arguments for excluding discrimination claims by disabled claimants from the Online Court. A particular consideration is the difficulty which many disabled claimants have with online access. We suggest that specific thought might be given to this when reaching the conclusions for the Final Report, which is due in July 2016.

445. Chapter 11 of the Interim Report considers the arguments for and against bringing the employment tribunals and the Employment Appeal Tribunal (EAT) within the structure of the civil courts.[659] The report notes in particular that these tribunals, unlike most other tribunals, deal with disputes between private parties rather than issues between private parties and the government. Here again we hope that the special problems of disabled claimants will not be lost sight of.

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656 Q167 (Andrew Brenton)

657 The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (SI 2013/1237), Schedule 1

658 Lord Justice Briggs, *Civil Courts Structure Review: Interim Report* (January 2016) para 6.47: https://www.judiciary.gov.uk/wp-content/uploads/2016/01/CCSR-interim-report-dec-15-final-31.pdf [accessed 16 March 2016]

659 Lord Justice Briggs, *Civil Courts Structure Review: Interim Report* (January 2016) paras 11.8–11.19: https://www.judiciary.gov.uk/wp-content/uploads/2016/01/CCSR-interim-report-dec-15-final-31.pdf [accessed 16 March 2016]

CHAPTER 10: OTHER REMEDIES FOR DISCRIMINATION

Introduction

446. Only the courts have power to award damages as compensation for discrimination, but there are other ways in which providers of goods and services can be persuaded, or even forced, to change their practices so that they comply with the Act and put disabled people as far as possible in the same position as those who are not disabled. In this chapter we consider first the role of conciliation and mediation. We then look at the possibility of creating a Disability Ombudsman. Finally we examine the already considerable powers of local authorities, how they might be enhanced, and how more and better use could be made of them.

Conciliation and mediation

447. The Disability Rights Commission developed a conciliation service to which any complaint arising out of an alleged failure to provide goods or services in a non-discriminatory way under the DDA could be referred for resolution. When the Disability Rights Commission was replaced by the EHRC, section 27 of the Equality Act 2006 gave the EHRC the power to provide conciliation services.

448. In March 2011 the Coalition Government, as part of its examination of public bodies, issued a Consultation Paper putting forward a number of suggestions for changes to the role and functions of the EHRC. One of the questions asked was: "Do you think the Government should repeal the EHRC's power to make provision for conciliation services, as part of the process of focussing the EHRC on its core functions?" Of the 293 responses received, 61 agreed, 206 disagreed and 26 were not sure. Despite this the Government concluded:

> "We have now decided to repeal the EHRC's power to make arrangements for the provision of conciliation in non-workplace disputes. We do not believe that arranging conciliation services for individual cases fits with the EHRC's strategic role, or that it is necessary in light of the range of good quality, accessible and effective mediation provision already available throughout England and Wales and Scotland."[660]

Accordingly section 27 of the Equality Act 2006 was repealed by section 64(1)(b) of the Enterprise and Regulatory Reform Act 2013 with effect from 25 June 2013.

449. The EHRC wrote: "The removal (which we opposed) of our statutory power to arrange the provision of conciliation services for non-employment cases is a particular concern for disabled people given that the majority of non-employment discrimination claims are disability cases."[661] That concern was shared by the Discrimination Law Association, who told us in written evidence: "DLA members advising and supporting disabled people in non-employment discrimination claims have called for re-instatement of the

660 Government Equalities Office, *Building a fairer Britain: Reform of the Equality and Human Rights Commission. Response to the Consultation* (May 2012) para 10 and para 2.13: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85308/EHRC-consultation-response.pdf [accessed 2 March 2016]

661 Supplementary written evidence from the Equality and Human Rights Commission (EQD0190)

EHRC power to establish a conciliation service."[662] Most forcefully Nick O'Brien, when asked which two recommendations he would like to see this Committee make, said: "The Disability Rights Commission had a power to arrange for a conciliation service in respect of goods, facilities and services disputes. The need for that, or something similar, has become more acute now that the prospect of taking cases to court—civil cases in the county courts and even in tribunals—is so significantly reduced."[663]

450. **We recommend restoring the Equality and Human Rights Commission's power to arrange the provision of conciliation services for non-employment discrimination claims. The service specification should provide for a range of delivery methods to ensure it is accessible, including provision of face-to-face conciliation, and the service should take direct referrals from the Equality Advisory and Support Service or its replacement.**

451. The Enterprise and Regulatory Reform Act 2013, having abolished the EHRC's power to arrange conciliation in non-employment cases, instituted a mandatory conciliation scheme for employment disputes. From May 2014 anyone wishing to make a claim to an Employment Tribunal must contact the Advisory, Conciliation and Arbitration Service (ACAS) in the first instance, although both parties need to agree to participate in the conciliation process. The Government's Memorandum describes this as "free, confidential and impartial assistance to help those dealing with an employment dispute", and says that "there are clear benefits for those involved".[664]

452. We can well believe that there are benefits for businesses involved. We are less sure of the benefits for those claiming disability discrimination. The Secretary of State told us that "over 83,000 cases were notified to ACAS in 2014–15, including about 6,900 cases involving possible disability discrimination. In 75% of cases, both parties agreed to participate in early conciliation, and then only 18% of cases led to a tribunal claim. Things are being resolved before they get to the tribunal."[665] It should not be assumed from this that the remaining 82% of cases are satisfactorily resolved. ACAS figures for 2014–15 show that 15% of conciliation cases result in a settlement, 63% do not, but neither do they progress to the Tribunal, and 22% do progress to the Tribunal. Fees are the most commonly cited reason for not proceeding.[666]

A Disability Ombudsman?

453. In our call for evidence we asked: "Could other regulatory bodies with a role in the effective implementation of the Equality Act 2010, such as inspectorates and ombudsmen, play a more significant part?"[667] Some of the replies we received did indeed consider whether the existing ombudsmen could play a greater part; we refer to this later. However a number of

662 Written evidence from Discrimination Law Association (EQD0129)
663 Q 165 (Nick O'Brien)
664 Government Equalities Office, *Memorandum to the Women and Equalities Select Committee on the Post-Legislative Assessment of the Equality Act 2010*, Cm 9101, July 2015, p 53: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441838/Memo_to_Women_Equalities.pdf [accessed 16 March 2016]
665 Q 190 (Nicky Morgan MP)
666 ACAS, *Research paper: Evaluation of ACAS early conciliation 2015*, February 2016, para 6.1: http://www.acas.org.uk/media/pdf/5/4/Evaluation-of-Acas-Early-Conciliation-2015.pdf [accessed 16 March 2016]
667 See Appendix 3

respondents suggested that there was a case for creating a specific Disability Ombudsman. Aspire wrote:

> "We would welcome the introduction of a Disability Ombudsman; this would allow individuals to seek closure and redress after experiencing discrimination, without the financial and time burdens of attending court. We would also recommend that there is facility for the Ombudsman to consider group complaints, with harsher penalties imposed where institutions have been found to routinely discriminate against disabled people."[668]

454. The National Association of Deafened People would have liked to see an independent Disability Ombudsman with an all-embracing role which would include: "Defining reasonable adjustment; publicising what constitutes reasonable adjustment; publicising what reasonable adjustments have been made by different companies grouped by size, type of company and when made; adjudicating in cases where reasonable adjustment has been refused; proactively requiring that similar companies make reasonable adjustments in line with their peers or in accordance with the recommendations set out in the EHRC guidance notes; and enforcing the provisions of the Act."[669]

455. Disability Rights UK thought that "Consideration could be given to a disability ombudsman, as an expert means of enforcing disability rights, free to the complainant, by hearing complaints and considering the facts of each case as presented by both the disabled person and the accused."[670]

456. However a number of witnesses pointed out that hearing complaints and adjudicating on them was primarily the task of the courts. The Law Centres Network wrote: "Ombudsmen should not be expected to adjudicate on discrimination cases because the basis of all Ombudsman complaints is good administration or good practice, whether or not actions are lawful."[671] Unity Law wrote: "Our experience of Ombudsmen is that they are loath to get involved with discrimination cases as they–quite correctly–see that as the role of the courts."[672]

457. We find that a persuasive argument. More persuasive still, however, was the view of Mick Martin, the Managing Director and Deputy Ombudsman of the Parliamentary and Health Service Ombudsman:

> "The landscape of ombudsmen is already very crowded but, more importantly, very confusing for the public who might want to utilise it … Our push is in the opposite direction from creating individual ombudsmen for particular things … individuals come to us because of a set of experiences they have had with the public sector. Those experiences tend to cover a number of things, one of which may be issues that are dealt with via the [Equality] Act. We think it is important to deal with those issues in the round … about 75% of the complaints we receive are about health. We often have cases whereby someone's treatment has been complicated or the service they received much harder and less well

668 Written evidence from Aspire (EQD0025)
669 Written evidence from the National Association of Deafened People (EQD0061)
670 Written evidence from Disability Rights UK (EQD0105). Others supporting the creation of a Disability Ombudsman included Mind (EQD0147); Sense suggested a Discrimination Ombudsman (EQD0122)
671 Written evidence from the Law Centres Network (EQD0135)
672 Written evidence from Unity Law (EQD0127)

> provided because that person had disabilities that were not catered for by the healthcare provider … breaking up the different types of things that people are experiencing is quite hard to do … from the point of view of the citizen, understanding whom to go to, where to go, how to get there, how to get help is more important than having subjectspecialist ombudsmen."[673]

458. Nick O'Brien, who at one time was Director of Policy and Public Affairs at the Office of the Parliamentary and Health Service Ombudsman, agreed: "it is important to remember there are a whole plethora of public and private ombudsmen—that the landscape is already quite cluttered … The challenge is to make sure that the existing ombudsmen more selfconsciously use the powers they already have to embed equality and human rights in what they do."[674] Sally Warren told us that the Care Quality Commission had already been able to reflect Equality Act considerations in their regulations. She explained: "It is really important that the Equality Act is embedded in our regulations, because we cannot take action under the Equality Act; we can take action only under the Health and Social Care Act 2008."[675]

459. The Secretary of State noted that Mr Martin did not think that creating a new ombudsman was a good idea, and said that the Government had been consulting on proposals to create a single public sector ombudsman. She personally was supportive of this.[676]

460. We have no view on whether creating a single public sector ombudsman with a broader remit would be an improvement on the current position, but we are persuaded that yet another ombudsman would not.[677] We believe that, instead, the mandates of other ombudsmen should be widened explicitly to cover disability issues. At a minimum this should include the Parliamentary and Health Service Ombudsman and the Local Government Ombudsman. There is a case, as the Discrimination Law Association suggested,[678] for the role of other audit or inspection bodies, such as Ofsted, the CQC or HM Inspector of Prisons, to include ensuring compliance with the PSED by the institutions they inspect. We believe the Government should consult with the EHRC and disabled people's organisations to determine which additional bodies should include in their mandate a specific reference to the interests of disabled people.

461. **We recommend that the Government amend the mandates of those regulators, inspectorates and ombudsmen that deal with services most often accessed by disabled people to make the securing of compliance with the Equality Act 2010 a specific statutory duty.**

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673 Q153 (Mick Martin)
674 QQ 157, 161 (Nick O'Brien)
675 Q 126 (Sally Warren)
676 Q 190 (Nicky Morgan MP)
677 Nick O'Brien gave us supplementary evidence suggesting that if the Committee were minded to recommend the appointment of a Disability Ombudsman, we might instead consider a Disability Commissioner. We believe the same reasoning applies. We are also mindful of the recommendation of the report published on 23 February 2016 by the Association of Chief Executives of Voluntary Organisations: "This review calls on government to establish the role of a Learning Disabilities Commissioner which puts a statutory duty on the holder to promote, enhance, and protect the rights of people with learning disabilities and their families in England." (EQD0188)
678 Written evidence from the Discrimination Law Association (EQD0129)

462. **We recommend that any new relevant public sector ombudsman be given an explicit remit to secure compliance with the Equality Act 2010 in the services for which it is responsible.**

The Powers of Local Authorities

463. It is clear to us from the large volume of evidence we received that much of the most serious and frustrating discrimination from which disabled people suffer is in access to services at local level. Transport for All gave us an example of just how effective the powers of local authorities can be: "Newham Council used its planning powers to deny planning permission to Transport for London to build the Jubilee Line through the borough until they agreed to make all the stations in Newham step-free, arguing it was a reasonable adjustment."[679]

464. We consider here the use local authorities can make of their powers to license premises, their powers to license taxis, and their building and planning powers.

Licensed premises

465. We agree with the Access Association:[680] "This country should not expect disabled people to spend their own time fighting for physical access to services. It should be provided by local authorities, via the licensing system … A local authority should be able to request the provision of facilities which enable disabled people equality of access, and should be able to enforce the maintenance and continued provision of these facilities."[681]

466. From the evidence we have received, we can confirm that, as the Access Association told us, a frequent example is the provision of a disabled person's toilet in a restaurant, pub or café.

> "Often, as space is at a premium, these facilities are used as storage areas for cleaning equipment or beverages, making them unavailable for people who need to use them. In such an instance, the [Act] requires the individual disabled person who experiences this discrimination to raise the issue with the service provider, which could eventually result in the disabled person having to take legal action against the service provider. In reality, many disabled people will often not bother going through this process, as it seems lengthy, costly and difficult - and the question should be asked: 'Why should they?'."[682]

467. Pubs, clubs and entertainment venues cannot operate without a licence from their local authority. Under section 4(2) of the Licensing Act 2003, a licence can be refused only for a failure to comply with one or more of four specific objectives.[683]

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679 Written evidence from Transport for All (EQD0116)

680 The Access Association describe themselves as an organisation for access professionals and experts from a variety of backgrounds, including the private sector and local authorities. "We are a national network of individuals who are passionate about access and inclusive design." The Access Association, 'About us': http://www.accessassociation.co.uk/what-we-do/ [accessed on 2 March 2016]

681 Written evidence from the Access Association (EQD0106)

682 *Ibid.*

683 Section 4 of the Licensing (Scotland) Act 2005 allows licences to be refused on the fifth ground of "protecting and improving public health".

Box 16: Licensing Act 2003, section 4

(1) A licensing authority must carry out its functions under this Act ("licensing functions") with a view to promoting the licensing objectives.

(2) The licensing objectives are—

(a) the prevention of crime and disorder;

(b) public safety;

(c) the prevention of public nuisance; and

(d) the protection of children from harm.

468. The Access Association thought that "entertainment and alcohol licensing regulations could be amended to require a local authority to assess premises applying for, or renewing, a licence in terms of access for disabled people, and to require an establishment or event to provide suitable access and facilities for disabled people before a licence is granted or renewed".[684] The solution is not quite so simple. It was made very plain to us that the primary legislation in its current form does not allow this.

469. Marie-Claire Frankie is the licensing solicitor at Sheffield Council, and told us: "I deal with all things licensing, whether it be taxis, premises, gambling or sex establishments. In addition, I am a solicitor for NALEO, which is the National Association of Licensing and Enforcement Officers and, as part of that, I go around the country giving training to licensing authorities and their officers and members on all matters licensingrelated."[685]

470. Ms Frankie explained that "If a new premise was coming in, the health and safety team would go out and they would make it part of the requirements and the plan of the premise that it had disabled access and disabled toilets and it was an accessible premise."[686] However for existing premises, there is nothing licensing authorities can do. They cannot revoke licences or add conditions.

> "Because of the licensing objectives, there is no way of getting it before a committee because they are not breaching crime and disorder; they are not committing public nuisance; they are not publicly unsafe; and they are not endangering children. If there was an additional objective relating to equality … when they are out looking at the premises, finding locked toilets, finding disabled toilets being used as storerooms, with their enforcement information they could bring that before the committee and review the licence. When the licence is being reviewed, you [would] have the mechanism there to add conditions to it or, in extreme cases, to revoke the licence."[687]

471. The only one of our witnesses to oppose a new objective in the Licensing Act was the Secretary of State. She told us: "Some local authorities already include awareness and compliance with equality law as a consideration when inspecting licensed premises … officials in the Government Equalities Office could liaise with the Home Office officials to consider the scope for spreading good practice." But she concluded: "I have to say I am instinctively

684 Written evidence from the Access Association (EQD0106)
685 Q 147 (Marie-Claire Frankie)
686 Q 154 (Marie-Claire Frankie)
687 *Ibid.*

against adding more and more into legislation because I do not think it always changes practices."[688]

472. The Licensing Act requires the Secretary of State to issue guidance to licensing authorities about the discharge of their functions.[689] In March 2015 the Home Secretary, who is responsible for licensing, issued Revised Guidance. Licensing authorities are required by section 5 of the Licensing Act to publish a statement of their licensing policy at least every five years, and the Guidance requires them to explain in their statement of licensing policy how they have complied with the PSED.[690] But awareness of good practice is not enough; enforcement powers are needed. None of our witnesses are suggesting legislation which would impose fresh burdens on businesses. The legislation is already in place, in the shape of the provisions of the Equality Act prohibiting discrimination and requiring reasonable adjustments. What our witnesses, and we, are suggesting is a change which will allow the burden of enforcing that legislation to shift from disabled people to local authorities, many of which are keen to assume that responsibility. Businesses which comply with the Equality Act have nothing to fear.

473. **We recommend that section 4(2) of the Licensing Act 2003 be amended to make a failure to comply with the Equality Act 2010 a ground for refusing a licence.** The Scottish Government may like to consider a similar amendment to the Licensing (Scotland) Act 2005.

Enforcement of the taxi provisions by licensing authorities

474. We have referred in Chapter 7 to the provisions of the Act on wheelchair accessibility of taxis, on the carriage of wheelchairs and assistance dogs, and on training. All of these need to be enforced, and local authorities need the powers to ensure the provisions are applied. Where they already have the powers, they need to use them. Some already do. Transport for All gave us the example of Stroud, who improve access by halving the licensing fees for wheelchair accessible minicabs. But they also told us of Guildford Council voting to remove the requirement for new taxis to be wheelchair accessible, despite a shortage of such cabs in the area. [691]

475. Some witnesses[692] suggested giving local authorities the power to decline licences if conditions such as training and wheelchair accessibility are not met. In fact local authorities already have that power. DPTAC explained: "Local authorities' licensing powers include the option to sanction taxi and private hire vehicle drivers who discriminate against disabled passengers, either by declining to pick them up, or by charging extra for carrying a wheelchair or assistance dog."[693] As DPTAC's Chair, Keith Richards, explained: "Ultimately, the sanction could be, as I say, through a properly enforced licensing regime, to remove their licence to trade as a taxi driver.

688 Q 148 (Nicky Morgan MP)
689 Licensing Act 2003, section 182. The issuing of the guidance is mandatory, it is approved by both Houses of Parliament, and has statutory force. Section 4(3) of the Act requires licensing authorities to "have regard" to it.
690 Home Office, *Revised Guidance issued under section 182 of the Licensing Act 2003*, March 2015, Paras 13.59–13.60: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418114/182-Guidance2015.pdf [accessed 16 March 2016]
691 Supplementary written evidence from Transport for All (EQD0178)
692 For example written evidence from Scope (EQD0158)
693 Written evidence from the Disabled Persons Transport Advisory Committee (EQD0094)

That could be the ultimate sanction, but with various levels of sanctions in between that and doing nothing."[694]

476. Ms Frankie explained: "In Sheffield, we used to have a by-law that meant, if you were driving a wheelchair accessible vehicle, as all our hackney vehicles are, you had to be fit to load and unload wheelchairs into your vehicle … If somebody came and said, "I have a back injury. I cannot do that", we would only issue them with a private hire licence … Now, with the Equality Act, there is the exemption in place … so you are in the position where you have a wheelchair-accessible vehicle being driven by a person who is not able to assist someone in a wheelchair to get in and out."[695] As we have explained, the provision of the Act requiring taxi drivers to carry wheelchair passengers (section 165) is not in fact yet in force.

477. Ms Frankie told us how the enforcement provisions did not always work in practice:

> "I have prosecuted a driver for failing to carry a guide dog … he was found guilty. He got his £100 fine, £200 costs. As a result of that, we referred his licence to the licensing committee and they revoked it, saying that, if you are not prepared to take guide dogs, you are not a fit and proper person, which is the test, to be a licensed driver … He appealed to the magistrates' court … and magistrates said, when looking at the two years he had been licensed, it was not reasonable. If you want local authorities to take this seriously and revoke licences when drivers breach the Equality Act, an addition to the 1976 Act[696] … would at least show magistrates that local authorities should take taxi licensing seriously".[697]

478. We referred in Chapter 7[698] to the Law Commission report on *Taxi and Private Hire Services,* where they said that two things were particularly clear:

> "first, that a lack of training and understanding are at the bottom of many of the problems experienced; and secondly, that enforcement of existing protections is weak, if indeed it takes place at all … the Secretary of State should have the power to set national standards for driver, vehicle and dispatcher licences. These powers would include setting standards relating to safety, accessibility and matters relating to enforcement. Discrimination against disabled people is an area in which these three categories of standards are inherently intertwined."[699]

479. As the Law Commission say, enforcement through the courts is costly, and courts would in any case have no power to take action against the licence. They continue:

> "In order to provide a more effective means of enforcement, and one which targets the offending behaviour more squarely, we strongly recommend that the Secretary of State should exercise the standard-setting powers to make it a condition of licence for both drivers and

694 Q 81 (Keith Richards)
695 Q 148 (Marie-Claire Frankie)
696 Local Government (Miscellaneous Provisions) Act 1976
697 Q 149 (Marie-Claire Frankie)
698 At para 312
699 Law Commission, *Taxi and Private Hire Services,* Cm 8864, May 2014, paras 12.40–12.41: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314108/9781474104531_Print.pdf [accessed 2 March 2016]

> operators that they comply with the provisions of the Equality Act 2010, specifically section 29, which prohibits discrimination in the provision of a service. This would allow a licensing authority to take action against the licence where there was sufficient evidence to demonstrate that a driver or dispatcher had, for example, overcharged a customer on the basis of a disability. It would remove the difficulties the customer faces in seeking to take action against this behaviour, as the procedure would be activated simply by lodging a complaint with the licensing authority."[700]

The draft Bill annexed to the report includes the necessary statutory provisions.[701]

480. **We endorse the recommendation of the Law Commission "that the Secretary of State require holders of taxi and private hire driver licences and dispatcher licences to comply with the Equality Act 2010 as a condition of the licence."**

481. **We recommend that all local authorities should exercise their powers of persuasion and coercion so that no drivers are licensed unless they have had disability awareness training, and no taxis are licensed unless they are wheelchair accessible. Where the driver or operator fails to comply with the Equality Act, local authorities should be prepared to take action against the licence.**

The built environment

482. In Chapter 7 we gave examples of modern railway developments with stations which were not accessible to disabled people. This criticism can too often be applied to buildings generally. The Manchester Disabled Peoples Access Group told us of "many new and refurbished public and private buildings with barriers for disabled people, including new award winning buildings such as the Whitworth Gallery in Manchester, and the new Central Library in Manchester."[702]

Building Regulations, Part M and Approved Document M

483. Part M of the Building Regulations[703] deals with access for disabled people in the built environment. Approved Document M, issued by the Secretary of State under his powers in the Building Act 1984, sets out ways in which builders and developers can comply with Part M of the Regulations. The 1999 version of Approved Document M was entitled "Access and facilities for disabled people", but in 2004 this was changed to "Access to and use of buildings". Part M and Approved Document M nevertheless remain of particular importance to disabled people. They apply to new buildings and, since 2004, can apply to some material alterations of and extensions to non-domestic buildings, and to some material changes of use. They do not require work to be undertaken to upgrade existing buildings.

484. We received evidence on the use of the Building Regulations in support of disabled people from Bob Ledsome, Deputy Director, Building Regulations

700 *Ibid.*, paras 12.43–12.44

701 *Ibid.*, Clause 15(3): "Regulations under section 14 must specify criteria which prevent a person who has applied for a taxi driver's licence or a PHV driver's licence being granted the licence unless, within a period specified in the regulations ending with the date the application was made, the applicant has completed an approved training course concerning the needs of disabled people who hire or seek to hire licensed taxis or licensed private hire vehicles."

702 Written evidence from Manchester Disabled Peoples Access Group (EQD0092)

703 The Building Regulations 2010 (SI 2010/2214), Schedule 1, Part M: Access to and use of buildings

and Energy Performance, Department for Communities and Local Government, who summarised the position as follows:

> "The important thing about the approved documents is that if a developer follows the guidance in that document then that is taken as proof of compliance with the relevant building regulations. It provides a safe haven, as it were. If a builder follows the approved document, then the building control body is likely to accept that is compliant with whatever the regulation requires. It does not mean that the developer has to follow the approved document guidance. They could do something different if they so wished, but in doing so they are likely to be quizzed more rigorously by the building control body as to how the particular approach that they take meets the relevant Part M requirements."[704]

485. Although compliance with the Approved Document will virtually guarantee compliance with the Regulations, does it necessarily follow that it also indicates compliance with an Act of Parliament which looks at buildings from the rather different perspective of disabled people? The version of the approved document in force until 1 October 2015 thought not, and the introduction includes this statement.[705]

Box 17: Building Regulations, Approved Document M, 2013 edition

> "The Equality Act 2010 imposes a duty to make reasonable adjustment to a physical feature … Although the guidance in this Approved Document, if followed, tends to demonstrate compliance with Part M of the Building Regulations, this does not necessarily equate to compliance with the obligations and duties set out in the [Equality Act]. This is because service providers and employers are required by the EA to make reasonable adjustment to any physical feature which might put a disabled person at a substantial disadvantage compared to a non-disabled person. In some instances this will include designing features and making reasonable adjustments to features which are outside the scope of Approved Document M. It remains for the persons undertaking building works to consider if further provision, beyond that described in Approved Document M, is appropriate."[706]

486. However an entirely revised edition of Approved Document M came into force on 1 October 2015.[707] This now consists of two volumes. The second, dealing with public dwellings, has the same passage as the earlier Approved Document, but regrettably the first volume does not, since it deals with new private dwellings to which Part 4 of the Equality Act does not apply.

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704 Q 134 (Bob Ledsome)

705 HM Government, 'The Building Regulations 2010, Access to and use of buildings, Approved Document M, 2013 edition': http://www.planningportal.gov.uk/uploads/br/BR_PDF_AD_M_2013.pdf [accessed 16 March 2016]

706 A feature which complies with Part M but not with the reasonable adjustment provisions will not necessarily require an alteration. Regulation 9(2) of the Equality Act 2010 (Disability) Regulations 2010, SI 2010/2128, reads: "It is not reasonable for a provider of services, a public authority carrying out its functions or an association to have to remove or alter a physical feature where the feature concerned (a) was provided in or in connection with a building for the purpose of assisting people to have access to the building or to use facilities provided in the building; and (b) satisfies the relevant design standard." This applies for 10 years: see para 1 of the Schedule to the Regulations.

707 HM Government, 'The Building Regulations 2010, Access to and use of buildings, Approved Document M, 2015 edition': https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/506503/BR_PDF_AD_M1_2015_with_2016_amendments_V3.pdf [accessed 16 March 2016]

Access Officers

487. If new buildings are going to be truly accessible for disabled people, local authority control officers, when assessing compliance with the Building Regulations, should be going further and looking at new designs and new buildings from the point of view of compliance with the Equality Act. In doing so they were, and to some extent still are, greatly assisted by expert access officers.

488. Rachel Smalley, an expert in housing and President of the Access Association, told us:

> "Many members of the Access Association are access officers who work in local government and … can influence the development process to ensure that an accessible and inclusive environment is created for everyone … It is really important to appreciate the value of access officers and access professionals who specialise in access and inclusion for disabled people, who have the specialist technical knowledge to make sure a development is accessible."[708]

489. We were unable to discover from our witnesses how the number of access officers now compares with some years ago. Mrs Pedler's statement that "We saw the disappearance of access officers",[709] seems to be true at least of Oxford. She told us in her written evidence: "I made an impassioned speech to Oxford City Council in 2010 stressing the importance of the Access Officer and her post was saved for 2 more years, albeit with reduced hours and a wider brief, but the battle is now lost."[710] Jane Young wrote: "In my own area, Kingston upon Thames, I was employed as Disability Equality and Access Officer from 2003 until 2009, when I retired. Since my retirement, the authority has had access to little or no advice on access and inclusion."[711]

490. The reason is not far to seek. Councillor McShane, the Cabinet Member for Health, Social Care and Culture at the Local Government Association, told us: "The nature of the financial constraints that we are under will often mean that—not just in relation to access officers—a whole series of functions are now sometimes being wrapped up into broader roles. It would be dishonest not to recognise that that can mean that you lose some of the really valuable expertise that you had before."[712]

491. **Local authorities must ensure that building control officers, whether or not employed by them, have access to the necessary expert advice to monitor compliance not just with Part M of the Building Regulations, but also with the Equality Act.**

Optional Building Regulations M4(2) and M4(3)

492. The new Approved Document M now includes two new optional technical standards. Standard M4(2) provides homes with features which will benefit disabled people, older people, families with young children, and people with temporary impairments or injuries (similar to the previous Lifetime Homes standard). Optional requirement M4(3) requires reasonable provision to be

708 Q 135 (Rachel Smalley)
709 Q 79 (Gwynneth Pedler)
710 Written evidence from Gwynneth Pedler (EQD0078)
711 Written evidence from Jane Young (EQD0009)
712 Q 135 (Councillor Jonathan McShane)

made for people to gain access to, and use, the dwelling and its facilities, and this provision must be sufficient to allow simple adaptation of the dwelling to meet the needs of occupants who are wheelchair users.

493. These requirements are optional, but local planning authorities can introduce planning policy to make the optional accessible housing standards a requirement. In supplementary written evidence the Access Association told us: "The Mayor of London and the Greater London Authority have led the way nationally in introducing planning policy to require the new optional technical standard on accessible housing. Their altered London Plan policy requires 90% of all new build housing to be built to the new optional building regulation standard M4(2) accessible and adaptable dwellings, and 10% to be built to be wheelchair accessible or wheelchair adaptable dwellings [M4(3)]. The Secretary of State has signed off the Mayor of London's proposed alterations to the London Plan subject to monitoring, and they have been approved and passed by the London Assembly (February 2016)."[713]
494. The Access Association added that relatively few local authorities outside London are working on introducing planning policy via their local plans or development frameworks, and that the optional Building Regulations provide the opportunity for this. They are "keen to see local authorities assessing the need for accessible housing, and introducing planning policy to achieve the provision of accessible housing (either accessible and adaptable, or wheelchair accessible or adaptable) via the optional Building Regulations M4(2) and M4(3)."[714]

495. In supplementary evidence Councillor McShane wrote: "To apply the higher standards councils will need to demonstrate evidence of both the need for the higher standards in their area and prove that the imposition of those will not make delivery of development unviable."[715]

496. **We believe that other local authorities should follow the example of London and revise their planning policy to require a significant proportion of new dwellings to be wheelchair accessible or wheelchair adaptable (standard M4(3)), and all other new dwellings to comply with optional standard M4(2).**

Summary

497. Councillor McShane summed up the situation from the point of view of the Local Government Association: "One of the reasons why local government is so keen on powers being devolved on things like licensing and planning is that we want the powers to be able to shape our community in a way that ties in and aligns with the values of our residents."[716]

498. **Local authorities and other licensing bodies are uniquely well placed to deal with many of the problems which prevent disabled people from enjoying life to the full. When exercising their licensing powers and their powers under the Building Regulations, they should always bear in mind their obligations under the PSED—revised, we hope, in accordance with our recommendations—to take all proportionate steps to eliminate discrimination and to advance equality of opportunity.**

713 Supplementary written evidence from Access Association (EQD0202)
714 *Ibid*
715 Supplementary written evidence from the Local Government Association (EQD0194)
716 Q 140 (Councillor Jonathan McShane)

CHAPTER 11: DISABLED CHILDREN AND CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

Educational attainment

499. In 2014 17.9% of pupils in England, and 22% in Wales, had special educational needs (SEN).[717] Not all children with SEN are disabled, and not all disabled children will be classed as having special educational needs. Nevertheless, the data on SEN provides a strong indication of the situation of disabled children more generally. The Equality and Human Rights Commission research for 'Is Britain Fairer?' revealed significant inequalities in education:

- In England 18.5% of children with SEN achieved a 'good level of development' compared to 65.6% of those without, and 23.4% of children with SEN achieved at least five A*–C GCSEs, compared with 70.4% of those without. This 'attainment gap' had actually increased since 2009. Wales had also seen an increased gap[718], although it had narrowed in Scotland.[719]

- Across Great Britain, 12.7% of young people with a 'life limiting illness or disability' were not in education, employment or training (NEET), compared to 6.8% of those without. In contrast to other aspects of attainment, this gap had decreased over time.[720]

- While the gap in the rate of exclusions had narrowed in England it remained wide at 116.2 exclusions per 1,000 pupils for those with SEN compared to just 17 per 1,000 for those without. The picture in Scotland was similar, but in Wales the gap had grown.[721]

- The experience of bullying also affected disabled pupils more: 40% of children and young people without disabilities reported being bullied, compared to 58% with a physical disability, 62% with a learning disability, and 67% with autism or Asperger syndrome.[722]

500. Other concerns highlighted by witnesses were the rate of informal exclusions, where a report by the Children's Commissioner in 2013 had shown a

717 Under the Education Act 1996 and the Children and Families Act 2014, a child in England and Wales is described as having a SEN if they have a learning difficulty which calls for special educational provision to be made for them. A child (or young person aged 16-25) has a learning difficulty if they: have a significantly greater difficulty in learning than the majority of children of their age, and/or have a disability which either prevents or hinders them from making use of educational facilities of a kind generally provided for children of their age in mainstream schools within the area of the local authority (and, in the case of those over 16, in mainstream post-16 institutions). A different definition is used in Scotland—that of children with Additional Support Needs (ASN)

718 Equality and Human Rights Commission, *Is Britain Fairer? Evidence Paper Series* (November 2015) Evidence Paper Domain E: Education: http://www.equalityhumanrights.com/sites/default/files/uploads/IBF/Evidence-papers/IBF_EPS_E_Education_final.pdf [accessed 2 March 2016]

719 Equality and Human Rights Commission, *Is Scotland Fairer?* (November 2015) p 26: http://www.equalityhumanrights.com/sites/default/files/uploads/Scotland/Scotland_Reports/EHRC_ISF_Report.pdf [accessed 2 March 2016] This may, however, have been a result of better recording and an expanded definition (p 27)

720 Equality and Human Rights Commission, *Is Britain Fairer? Evidence Paper Series* (November 2015) Evidence Paper Domain E: Education: http://www.equalityhumanrights.com/sites/default/files/uploads/IBF/Evidence-papers/IBF_EPS_E_Education_final.pdf [accessed 2 March 2016]

721 *Ibid.*

722 *Ibid.*

disproportionate impact on children with special educational needs,[723] and what the Alliance for Inclusive Education believed to be the segregation of disabled children within mainstream schools.[724]

Accessing rights under the Equality Act: Definition of disability

501. Witnesses argued that the current framing of the definition of disability under section 6(1) of the Equality Act was, inadvertently, acting to deter schools from making some of the reasonable adjustments needed to address such inequalities. Regulation 4(1) of the Equality Act 2010 (Disability) Regulations 2010[725] provides that "a tendency to physical or sexual abuse of other persons" is not to be treated as an impairment for the purposes of the definition of disability. This is for "public policy reasons, for example to avoid providing protection for people where the effect of their condition may involve anti-social or criminal activity."[726] IPSEA and the Alliance for Inclusive Education were concerned that the exclusion had resulted in schools moving straight to exclusion of pupils with challenging behaviour, without first considering whether reasonable adjustments could prevent it. Claire Jackson for IPSEA told us in oral evidence:

> "Common examples include children on the autistic spectrum, children with attention deficit hyperactivity disorder, and children with various types of mental health difficulties. … Quite often they present as challenging because reasonable adjustments have not been made for them … if the child is then excluded for that physical aggression and that interaction, we have seen an increase in governing bodies relying on that to rebut a claim of disability discrimination. They say, "Yes, we accept the child is disabled, but they have a tendency to physical abuse"."[727]

502. We agree with the public policy reasons, but believe that treating a tendency to physical abuse as not amounting to an impairment has, unintentionally, discouraged schools from paying sufficient attention to their duties under the Act. Removal of the exclusion would allow a proper examination to be made of any suggestion of disability discrimination, including a failure to make a reasonable adjustment. This would not result in schools being required to tolerate violent behaviour—the flexibility of the reasonable adjustment duty would, for example, allow a school to take into account the needs of the wider school population.

723 Claire Jackson (Q 118), referencing the report Office of the Children's Commissioner *"Always Someone Else's Problem" Office of the Children's Commissioner Report on illegal exclusions* (April 2013): http://www.childrenscommissioner.gov.uk/sites/default/files/publications/Always_Someone_Elses_Problem.pdf [accessed 2 March 2016]

724 Written evidence from the Alliance for Inclusive Education (EQD0110)

725 Equality Act 2010 (Disability) Regulations 2010 (SI 2010/2128)

726 Explanatory Memorandum to the Equality Act 2010 (Disability) Regulations 2010 (SI 2010/2128)

727 Q 118 (Claire Jackson)

Box 18: Example changes that a school can make to support positive behaviour in the classroom

While each child will be different, the following are some examples that could be used for children with challenging behaviour, autism or learning difficulties:

- providing the child with a channel of communication, for example use of peer support or other methods of communicating wants and needs;
- providing structure and predictability to the child's day, for example by the use of visual timetables, careful prior explanation of changes to routines and clear instructions for tasks;
- using a carefully designed system of behaviour targets drawn up with the child and linked to a reward system which, wherever possible, involves parents or carers;
- ensuring that staff are briefed on potential triggers for outbursts, warning signs which may indicate potential behaviour change, and effective ways of heading off trouble at an early stage.

Source: Examples adapted from the Special educational needs and disability code of practice: 0 to 25 years, January 2015, DfE

503. **Schools should be encouraged and supported to make the kinds of adjustments that can help to address the educational inequalities faced by disabled children and young people, including those whose disability gives rise to challenging behaviour. This is undermined by Regulation 4(1) of the Equality Act 2010 (Disability) Regulations 2010, and we recommend that the Regulations are amended so that a tendency to physical abuse of other persons ceases to be treated as not amounting to an impairment for the purposes of the definition of 'disability'.**

Proactive inspection and enforcement: the role of Ofsted

504. Ofsted has an important role in challenging education providers to "improve services within the spirit of the law",[728] but the National Deaf Children's Society were concerned that Ofsted did not frequently "inspect the adequacy of accessibility plans and strategies" and that their most recent annual report "contained only a very brief reference to children with disabilities or special educational needs."[729] The Association of Colleges agreed, but suggested that "this may change with the new Common Inspection Framework"[730], which Nick O'Brien also flagged as giving "a more prominent place to equality issues."[731] Lesley Cox, Ofsted National Lead for Special Educational Needs, explained that judgments under the common inspection framework "include personal development and welfare, academic outcomes, progress against measured targets, leadership and management, as well as the quality of teaching." She told us that:

> "If we found any discrimination or concerns against individuals, or particularly groups of students, in the sense of special educational

728 Written evidence from the British Deaf Association (EQD0101), the Association of Colleges (EQD0073), the Association of National Specialist Colleges (EQD0123) and the Challenging Behaviour Foundation (EQD0153)
729 Written evidence from the National Deaf Children's Society (EQD0053).
730 Written evidence from the Association of Colleges (EQD0073)
731 Q 161 (Nick O'Brien)

needs, we would then reflect that in our judgments on leadership and management and, indeed, the other judgments that we make, and the school would be placed into a category of concern."[732]

Asked if she believed that Ofsted inspections were able to pick up evidence of informal exclusions, she replied: "We would expect the school to have information about where every student was at any part of the term. We ask for that information and we would interrogate that quite clearly, in terms of any unaccounted absences."[733]

505. Furthermore, the Department for Education highlighted that Ofsted was "going to be introducing a new system of inspecting local area performance on special educational needs and disability."[734] The consultation document, issued jointly with the Care Quality Commission, made no explicit reference to the Equality Act or to schools' duties and others' under it, and nor did the report on the responses to the consultation.[735] Nevertheless, the consultation report makes it clear that local area inspections will be seeking to evaluate outcomes for children and young people, including but not limited to academic outcomes.[736] This should provide an opportunity to identify and act on educational disadvantages facing disabled students.

506. **It is unfortunate that the Ofsted and CQC consultation on the inspection of local areas' effectiveness in "identifying and meeting the needs of children and young people who have special educational needs and/or disabilities" did not make mention of the Equality Act or schools' and others' duties under it. This ought to be remedied in the development of the inspection framework and inspection handbook.**

507. **The inclusion of equality matters in the Common Inspection Framework on education, skills and early years is welcome. Ofsted's inspection methodology will also need to be adequate to identify where schools are practising informal exclusion or internal segregation of disabled pupils.**

732 Q 119 (Lesley Cox)
733 *Ibid.*
734 Q 121 (Ann Gross)
735 Ofsted & CQC, 'The inspection of local areas' effectiveness in identifying and meeting the needs of children and young people who have special educational needs and/or disabilities: A report on the responses to the formal consultation' March 2016: https://www.gov.uk/government/consultations/local-area-send-consultation [accessed 15 March 2016]
736 *Ibid.*

CHAPTER 12: PARTICIPATION IN POLITICS

508. Article 29 of the UN Convention on the Rights of Persons with Disabilities requires States Parties to "guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others", and in particular to "ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected." In March 2012 the UN High Commissioner for Human Rights noted that disabled people continue to encounter legal, physical and communication barriers in exercising those rights.

509. As we mentioned in paragraph 76, the UN Disability Committee is expected to examine the United Kingdom's compliance with the Convention later this year. In anticipation of this, in September 2015 the EHRC published a report *Smoothing the Pathway to Politics for Disabled People*.[737] It is clear from this that where data are collected–and in too many cases they are not–generally speaking they show that in national, regional and local elected bodies, the proportion of disabled people is well below the proportion in the population. At the 2015 general election two disabled members of the House of Commons retired, and a further two were not re-elected. This left only two members who, at the date of the EHRC report, described themselves as disabled people. 16% of working age adults have a disability; the same proportion would require over 100 disabled members.

510. One of the principal obstacles in the way of disabled people standing for election is the extra cost which they may incur in campaigning, compared to non-disabled people. In 2012 the Government set up an Access to Elected Office for Disabled People Fund to support a range of activities that are essential to standing for selection as a candidate by a political party, and activities essential to standing for election, for example, canvassing and attending election hustings. Other activities, such as taking part in public meetings to discuss local issues, could be considered appropriate especially if other candidates in the election being contested were expected to attend. The amount of funding disbursed across the country and to different political parties varied, with those in London and the South East of England applying for and receiving the most, and Labour candidates applying for and receiving the most.

511. David Buxton told us: "The British Deaf Association very much welcomed the Coalition Government's Access to Elected Office for Disabled People Fund, which was vitally positive for deaf people in getting involved in the political process and having access to the election process. It was very successful, so I wish to commend that process."[738] He stressed that there was a real challenge for any deaf person who wants to get involved in local or national politics. "Having an interpreter on a platform is useful, but it is not necessarily the answer. It does not give me the opportunity to discuss with

737 Equality and Human Rights Commission, *Smoothing the Pathway to Politics for Disabled People* (September 2015): http://www.equalityhumanrights.com/sites/default/files/uploads/documents/UNCRDP/Smoothing%20the%20Pathway%20to%20Politics%20for%20Disabled%20People.pdf [accessed 2 March 2016]

738 Q 68 (David Buxton)

delegates in the hall … that is where there is a gap in terms of bringing the deaf community in to engage with politics in this country."[739]

512. The Fund closed for applications on 31 March 2015. The Administrator published figures showing that in the three years of the Fund 109 applicants were granted a total of £271,260. An evaluation of the Fund is being undertaken to consider the extent to which it removed barriers to disabled people's participation in public life. David Buxton said: "It is a shame to provide something and take a step back so soon afterwards."[740] In reply to a written question from Caroline Lucas MP, on 22 December 2015 Caroline Dinenage MP said that the evaluation would be published "in due course", and that an announcement regarding the future of the fund was anticipated "early in 2016".[741] At the date this report was agreed no announcement had yet been made. We hope it will be made soon, and will result in funding being made available for future elections.[742]

513. The second main obstacle to disabled people taking part in politics is that, especially in the case of MPs, this is a full time job, something which is not always feasible for disabled people. Disability Rights UK told us that "Requiring MPs to work full time is a barrier that can prevent a disabled person from standing for elected office as they may not be physically and/or mentally able to manage the demands of the role."[743] They supported the concept of changing the law to allow MPs to job share, suggesting that this would be a reasonable adjustment to the existing practice. This was particularly the argument of Disability Politics UK, who would like to see "working part time as an MP [becoming] one of the accepted routes into elected political office."[744] They drew our attention to the 10-minute rule Bill introduced in 2012 by John McDonnell MP, and to the explanatory memorandum giving responses to some of the most commonly raised difficulties.

514. It is certainly the case that the problems of disabled people will become better known, and solutions to them are more likely to be found, if more disabled people can participate in politics at national and local level. A change in the law to allow more than one member to represent a constituency might well be of assistance to disabled people, but could hardly be limited to them. The Electoral Commission, in their July 2015 report to Parliament on the May 2015 UK General Election, stated: "we received several queries before and during the nomination period about whether two or more people could jointly stand for election as MP for a constituency and share the role between them. The issue was raised with particular regard to disabled people and parents of young children …"[745]

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739 *Ibid.*

740 *Ibid.*

741 Written Answer HC19860, Session 2014–15

742 On 20 January 2016 Caroline Lucas MP and 40 other members tabled an early day motion "That this House … notes the Equality and Human Rights Commission's September 2015 recommendation that the Government reopens the Fund … and calls on the Government to act on that recommendation as a matter of urgency, so as to benefit disabled candidates planning to stand in local and regional elections in May 2016."

743 Written evidence from Disability Rights UK (EQD0105)

744 Written evidence from Disability Politics UK (EQD0056)

745 Electoral Commission, *The May 2015 UK elections: Report on the administration of the 7 May 2015 elections, including the UK Parliamentary general election* (July 2015) p 57: http://www.electoralcommission.org.uk/__data/assets/pdf_file/0006/190959/UKPGE-report-May-2015-1.pdf [accessed 2 March 2016]

515. We have felt it right to draw attention to the difficulties of including disabled people, and other would-be part-timers, as elected MPs. But this would be a far-reaching change going well beyond an adjustment for disabled people, and is outside our terms of reference.

516. We note that, where legislation is not needed, much can be and is done by Parliament adjusting its practices and procedures. In this House, members of this Committee have in the past benefited from such adjustments; and on 8 July 2015 the House agreed a motion allowing members of the Committee with restricted mobility to vote in the room in which the Committee was meeting. This House has a significant number of disabled members, and we are particularly grateful to those who gave us written and oral evidence.

517. The existing law has not prevented disabled people from being elected and re-elected as MPs, or being members of this House, but the number of disabled members of both Houses is woefully small. As is well known, Jack Ashley MP was profoundly deaf for much of his time as an MP, and of his time in this House,[746] but developed methods of following parliamentary proceedings which have been of assistance to others. David Blunkett MP became the first blind Cabinet Minister.[747] Dame Anne Begg MP, the first wheelchair user for over a century to be a member of the House of Commons, was Chair of the Work and Pensions Select Committee for five years.[748] These are wholly exceptional people. Adjustments could and should be made to assist any disabled person who wishes to embark on a political career.

746 Rt Hon Jack Ashley MP, CH, later Rt Hon Lord Ashley of Stoke.

747 Rt Hon David Blunkett MP, Secretary of State for Education and Employment, subsequently Home Secretary and Secretary of State for Work and Pensions; now Rt Hon Lord Blunkett. We are grateful to Lord Lexden for pointing out to us that Henry Fawcett MP, the great Cambridge teacher turned Liberal MP, who was blind, was appointed Postmaster-General by Gladstone in 1880, but because of his blindness was not given a Cabinet post. On 28 April 1880 he wrote to his parents: "I shall be a Privy Councillor, but shall not have a seat in the Cabinet. I believe there was some difficulty raised about my having to confide Cabinet secrets; this objection, I think, time will remove."

748 She was also a member of the Joint Committee which conducted pre-legislative scrutiny of the draft Bill for the Disability Discrimination Act 2005.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Background

1. We believe that combining disability with the other protected characteristics in one Act did not in practice benefit disabled people, but that separating statutory treatment of disability from the other protected characteristics would be impractical. We prefer to concentrate on improvements to the Equality Act 2010 which will give greater prominence to disability and will increase the protection of disabled people. (Paragraph 50)

2. We call on the Government to make a commitment that it will give due consideration to the provisions of the UN Convention on the Rights of Persons with Disabilities when formulating new policy and legislation which may have an impact on disabled people. (Paragraph 84)

Oversight within Government

3. Locating both the Minister for Women and Equalities and the Government Equalities Office within the same department is welcome, and we hope that the Government will keep in mind the need for coherence and stability if and when any future changes are made to the location of the equalities portfolio. (Paragraph 110)

4. The ability of the Minister to influence policy and practice across Government is more important than the location of the Minister's portfolio. We agree that this has been diminished by the change in status of the Minister for Disabled People, and greatly regret the decision of the Government to downgrade the role in this manner. The effectiveness of the role is also affected by the lack of power to challenge policy that may impact adversely on disabled people. (Paragraph 112)

5. The Cabinet's Social Justice Committee, whose terms of reference are "To consider issues relating to poverty, equality and social justice", has 16 members, but the Minister for Disabled People is not one of them. He should be made a member. (Paragraph 113)

6. The Social Justice Committee should ensure that government departments do not take any major initiatives which will or may affect disabled people without first obtaining the Committee's agreement. (Paragraph 114)

7. The Minister responsible for Children and Families has the rank of Minister of State, and until 2015 so did the Minister responsible for cross-government disability policy and strategy. The Minister for Disabled People should have the rank of Minister of State restored, to emphasise the importance of the post. (Paragraph 115)

The Equality and Human Rights Commission

8. We recommend that the Equality and Human Rights Commission engage with disabled people and their organisations to co-produce a disability specific action plan covering the full range of the Commission's powers. The Disability Committee's involvement will be fundamental to the development and implementation of the plan, but it must belong to the whole organisation. (Paragraph 137)

9. We recommend that, from 1 April 2017, the Equality and Human Rights Commission use its powers under Schedule 1 to the Equality Act 2006 to re-establish its Disability Committee as a decision making body, in a way that as closely as possible mirrors the current statutory functions and powers of the Disability Committee. We welcome the fact that the EHRC continues to provide dedicated staff support for the Committee, in the face of staffing reductions, and recommend that it ring-fence specific resources for the Committee. (Paragraph 144)

10. We recommend that the Equality Advisory and Support Service be returned to the Equality and Human Rights Commission, either in-house or as the contract managers for a tendered-out service. (Paragraph 155)

11. We further recommend that, once the Equality and Human Rights Commission is again responsible for the services provided by the Equality Advisory and Support Service, it should develop a service specification and strategy to realise fully the advantages of in-house provision, including face-to-face legal advice, the restored conciliation service and the link to its enforcement function. (Paragraph 156)

12. We recommend that the Government lay before Parliament as Codes of Practice the technical guidance on the Public Sector Equality Duty, Schools, and Further and Higher Education that have already been drafted and extensively consulted on by the Equality and Human Rights Commission. (Paragraph 164)

Communication and language

13. All government departments, local authorities and official bodies should review their means of communication with the public, especially online, from the point of view of people with a variety of disabilities. The Office for Disability Issues should coordinate this and lead by example. (Paragraph 170)

14. We recommend that the Equality and Human Rights Commission work with local and national disabled people's organisations to undertake a wide programme of educational activity, raising awareness of the rights of disabled people and the responsibilities of those subject to duties under the Equality Act 2010. (Paragraph 191)

15. If this public awareness and education campaign should require the Equality and Human Rights Commission to access its discretionary programme funds, we expect the Government to fully support it in doing so. (Paragraph 192)

Reasonable adjustment

16. We have carefully considered the statutory provisions on reasonable adjustment and conclude that, despite the problems described, the flexibility they provide is necessary for their effectiveness. (Paragraph 217)

17. We have sympathy for those calling for greater clarity on how 'reasonable' cost is determined, but question how far this is possible given that this can be a matter of judgment rather than objective criteria. Exercising this judgment does, however, require information, and guidance should make it clear that an adjustment should not be rejected as unreasonable on grounds of cost unless the expected cost is known. (Paragraph 225)

18. The Equality and Human Rights Commission should prepare a specific Code of Practice on reasonable adjustments to supplement the existing Equality Act Codes. This would provide an appropriate balance between flexibility and clarity. (Paragraph 231)

19. Alongside the new Code, the Equality and Human Rights Commission should produce, in consultation with organisations of and representing disabled people, industry-specific guidance on reasonable adjustment. Where appropriate this should be done in partnership with relevant professional and regulatory bodies. Regular updates on case law developments will be essential to the effectiveness of these guides, and should be provided by the EHRC. (Paragraph 234)

20. We do not understand why yet another review is needed of the commencement of the provisions dealing with alterations to common parts. There is no justification for further delay. They must be brought into force forthwith. (Paragraph 244)

21. We recommend that the Government include provisions similar to those of the Accessible Sports Grounds Bill in a Government Bill. (Paragraph 248)

22. We recommend that ministers report regularly to Parliament on the progress made (a) by the Premier League and by the Football League, and (b) on comparable action by the operators of other large stadia. (Paragraph 249)

Carers

23. The Equality and Human Rights Commission should work with carers' organisations to produce and disseminate guidance on the rights of carers under the Equality Act 2010. (Paragraph 269)

24. The Government Equalities Office, the Office for Disability Issues, the Department for Business, Innovation and Skills and the EHRC should undertake joint work to encourage employers to respond positively to flexible working requests from carers of disabled people. (Paragraph 270)

Transport

25. Network Rail, Transport for London, train operators and bus companies should put more of their resources towards making their stations and vehicles more easily accessible to those in wheelchairs. (Paragraph 285)

26. The Driver and Vehicle Standards Agency must enforce strictly the Regulations governing access to vehicles. (Paragraph 286)

27. More resources should be devoted to providing annunciators on trains and buses which do not have them. No new vehicles should be put into service which do not have audio and visual annunciators. The Public Service Vehicles Accessibility Regulations 2000 should be amended accordingly. (Paragraph 293)

28. Training of all rail, bus and coach staff to a level agreed in consultation and set out in law is in our view essential. If no adequate level of training can be agreed, Ministers have power under section 22(2) of the Equality Act 2010 to make Regulations prescribing the level of training which is reasonable. They should be prepared to use these reserve powers if necessary, and to enforce the Regulations they make. (Paragraph 298)

29. The reasons offered by the Government for failing to bring section 165 of the Equality Act 2010 into force 20 years after its enactment are entirely unconvincing. Ministers should be considering the burden on disabled people trying to take taxis, not the burden on taxi owners or drivers. Section 165 and the remaining provisions of Part 12 of the Act should be brought into force forthwith. (Paragraph 311)

30. The Department for Transport should update its 2011 Local Transport Note to offer guidance to local authorities on how shared spaces schemes can best cater for the needs of disabled people. Local authorities should review existing schemes in the light of that guidance, make changes where necessary and practicable, and base any new schemes on that guidance. (Paragraph 324)

The Public Sector Equality Duty

31. Our evidence has demonstrated that there is a fundamental flaw in the current Public Sector Equality Duty, namely that a public authority can make no progress towards the aims of the general duty and yet be judged compliant with it by the courts. We have heard convincing evidence that an amendment is needed to remedy this. (Paragraph 345)

32. We recommend that a new subsection should be added to section 149 of the Equality Act 2010: "To comply with the duties in this section, a public authority in the exercise of its functions, or a person within subsection (2) in the exercise of its public functions, shall take all proportionate steps towards the achievement of the matters mentioned in subsection (1)." (Paragraph 346)

33. We recommend that the Government replace the Equality Act 2010 (Specific Duties) Regulations 2011 with provisions that require a listed public authority to develop and implement a plan of action setting out how they will meet the requirements of the general duty in all of their functions. (Paragraph 360)

34. Duties to involve disabled people in the development and implementation of actions, to collect and publish data to measure progress against the aims of the general duty, and to report regularly on progress should also be specified in the Regulations. (Paragraph 361)

35. We recommend that the Government produce an assessment of the cumulative impact of budgets and other major initiatives on disabled people. It should be supported in this by the Government Equalities Office and the Office for Disability Issues. (Paragraph 372)

36. We recommend that our findings and recommendations regarding the Public Sector Equality Duty form the basis of the planned Government review. (Paragraph 375)

Enforcement through the judicial process

37. We recommend that HM Courts and Tribunals Service be required to collect from all county courts and from the Employment Appeal Tribunal, and to make publicly available, data relating to disability discrimination claims separately from other claims, as they do in employment tribunals. (Paragraph 386)

38. We recommend that the Ministry of Justice, in its ongoing review of fees, act on the strong evidence that tribunal fees are unfairly obstructing discrimination claims under the Equality Act 2010. (Paragraph 389)

39. The Civil Procedure Rules should be amended to apply Qualified One-Way Costs Shifting to discrimination claims under the Equality Act 2010. (Paragraph 402)

40. The Government should reinstate the statutory questionnaire procedure. (Paragraph 410)

41. We recommend that the Government restore the power of tribunals to make wider recommendations with a view to preventing discrimination experienced by the claimant from happening to others. (Paragraph 416)

42. The Government should consider changing the law to allow charities and other bodies which do not themselves have a legal interest to bring proceedings in the interests of classes of disabled people who are not themselves claimants. This would enable them to remedy action already taken by a public authority or to prevent anticipated action. (Paragraph 434)

43. Section 14 of the Equality Act 2010 on dual discrimination should be brought into force forthwith. (Paragraph 439)

Other remedies for discrimination

44. We recommend restoring the Equality and Human Rights Commission's power to arrange the provision of conciliation services for non-employment discrimination claims. The service specification should provide for a range of delivery methods to ensure it is accessible, including provision of face-to-face conciliation, and the service should take direct referrals from the Equality Advisory and Support Service or its replacement. (Paragraph 450)

45. We recommend that the Government amend the mandates of those regulators, inspectorates and ombudsmen that deal with services most often accessed by disabled people to make the securing of compliance with the Equality Act 2010 a specific statutory duty. (Paragraph 461)

46. We recommend that any new relevant public sector ombudsman be given an explicit remit to secure compliance with the Equality Act 2010 in the services for which it is responsible. (Paragraph 462)

47. We recommend that section 4(2) of the Licensing Act 2003 be amended to make a failure to comply with the Equality Act 2010 a ground for refusing a licence. (Paragraph 473)

48. We endorse the recommendation of the Law Commission "that the Secretary of State require holders of taxi and private hire driver licences and dispatcher licences to comply with the Equality Act 2010 as a condition of the licence." (Paragraph 480)

49. We recommend that all local authorities should exercise their powers of persuasion and coercion so that no drivers are licensed unless they have had disability awareness training, and no taxis are licensed unless they are wheelchair accessible. Where the driver or operator fails to comply with the Equality Act 2010, local authorities should be prepared to take action against the licence. (Paragraph 481)

50. Local authorities must ensure that building control officers, whether or not employed by them, have access to the necessary expert advice to monitor compliance not just with Part M of the Building Regulations, but also with the Equality Act 2010. (Paragraph 491)

51. We believe that other local authorities should follow the example of London and revise their planning policy to require a significant proportion of new dwellings to be wheelchair accessible or wheelchair adaptable (standard M4(3)), and all other new dwellings to comply with optional standard M4(2). (Paragraph 496)

52. Local authorities and other licensing bodies are uniquely well placed to deal with many of the problems which prevent disabled people from enjoying life to the full. When exercising their licensing powers and their powers under the Building Regulations, they should always bear in mind their obligations under the public sector equality duty—revised, we hope, in accordance with our recommendations—to take all proportionate steps to eliminate discrimination and to advance equality of opportunity. (Paragraph 498)

Disabled children and children with special educational needs

53. Schools should be encouraged and supported to make the kinds of adjustments that can help to address the educational inequalities faced by disabled children and young people, including those whose disability gives rise to challenging behaviour. This is undermined by Regulation 4(1) of the Equality Act 2010 (Disability) Regulations 2010, and we recommend that the Regulations are amended so that a tendency to physical abuse of other persons ceases to be treated as not amounting to an impairment for the purposes of the definition of 'disability'. (Paragraph 503)

54. It is unfortunate that the Ofsted and Care Quality Commission consultation on the inspection of local areas' effectiveness in "identifying and meeting the needs of children and young people who have special educational needs and/or disabilities" did not make mention of the Equality Act or schools' and others' duties under it. This ought to be remedied in the development of the inspection framework and inspection handbook. (Paragraph 506)

55. The inclusion of equality matters in the Common Inspection Framework on education, skills and early years is welcome. Ofsted's inspection methodology will also need to be adequate to identify where schools are practising informal exclusion or internal segregation of disabled pupils. (Paragraph 507)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Baroness Brinton
Baroness Browning
Baroness Campbell of Surbiton
Baroness Deech (Chairman)
Lord Faulkner of Worcester
Lord Foster of Bishop Auckland (from 9 July 2015)
Lord Harrison
Baroness Jenkin of Kennington
Lord McColl of Dulwich
Lord Northbrook
Baroness Pitkeathley
Baroness Thomas of Winchester
Baroness Wilkins (resigned 9 July 2015)

Declarations of Interest

Baroness Brinton

In receipt of adaptations and tools for everyday living from Hertfordshire County Council

Blue Badge holder

Baroness Browning

Vice President, National Autistic Society

Patron, Research Autism

Patron, Action on Elder Abuse

Vice President, Alzheimer's Society

Patron, Autism Diagnostic Research Centre

Friend of the Royal College of Social Workers

Former Government Co-chair, Women's National Commission

Former Chairman, Women into Business

Has relatives with disabilities

Baroness Campbell of Surbiton

Patron, Just Fair

Patron, National Disability Archive

Founder and Member, Not Dead Yet UK

Recipient of a Social Care Personal budget, Disability Living Allowance and Access to Work

Disability rights commissioner throughout the life of the Disability Rights Commission

Commissioner of Equality and Human Rights Commission for three years

Baroness Deech (Chairman)

No relevant interests declared

Lord Faulkner of Worcester

President, Heritage Railway Association

Chair, Great Western Railway Advisory Board

Member, Board of Trustees of the National Football Museum

Deputy Chair, Board of Trustees of Science Museum Group

Vice President, The National League

Vice President, Level Playing Field (formerly National Association for Disabled Supporters)

Lord Foster of Bishop Auckland

No relevant interests declared

Lord Harrison

No relevant interests declared

Baroness Jenkin of Kennington

No relevant interests declared

Lord McColl of Dulwich

No relevant interests declared

Lord Northbrook

No relevant interests declared

Baroness Pitkeathley

Vice President, Carers UK

Patron, Herefordshire Carers Support

Baroness Thomas of Winchester

In receipt of Disability Living Allowance

Liberal Democrat Spokesman for Disability

Trustee of Muscular Dystrophy UK and Chairman of their Services Development Committee

Patron, Thrive

Member, MCC Disability Access Group

Blue Badge Holder

Baroness Wilkins

Recipient of Disability Living Allowance

A full list of Members' interests can be found in the Register of Lords' Interests: http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/

Catherine Casserley, Specialist Adviser

Barrister, Cloisters Chambers

Senior Legislation Adviser to the Disability Rights Commission, 2001–07

Member of the external panel of Counsel of the Equality and Human Rights Commission

Member of the Discrimination Law Association

Member of the Employment Lawyers Association

Counsel acting in a number of cases to which reference is made in this report

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at www.parliament.uk/equality-act-committee and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with ** gave both oral evidence and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

**	Tracey Kerr, Head of Legal Advisers, Government Equalities Office	QQ 1–13
**	Charles M Ramsden, Deputy Director, Equality Framework, Government Equalities Office	
**	Pat Russell, Head of the Office for Disability Issues, Department for Work and Pensions	
**	Fazilet Hadi, Managing Director RNIB Engagement, Royal National Institute of Blind People (RNIB)	QQ 14–26
**	Liz Sayce, Chief Executive, Disability Rights UK	
**	Rebecca Hilsenrath, Chief Legal Officer, Equality and Human Rights Commission	QQ 27–42
**	Lord Holmes of Richmond, Disability Commissioner on the Equality and Human Rights Commission	
**	Baroness O'Neill of Bengarve, Chair of the Equality and Human Rights Commission	
**	Barbara Cohen, Discrimination Law Association	QQ 43–51
**	Rachel Crasnow QC, Bar Council	
**	Douglas Johnson, Law Centres Network	
**	Lucy Scott-Moncrieff CBE, Law Society	
**	Elliot Dunster, Group Head of Policy, Research and Public Affairs, Scope	QQ 52–59
**	Paul Farmer, Chief Executive, Mind	
**	Andrew Lee, People First (Self Advocacy)	QQ 60–65
**	David Buxton, Director of Campaigns and Communications, British Deaf Association	QQ 66–71
**	Terry Riley, Chair, British Deaf Association	
*	James Lowman, Association of Convenience Stores	QQ 72–78
**	Mark McLane, Global Head of Inclusion and Diversity from Business Disability Forum Partner Barclays Bank	
**	Dr Peter Purton, Policy Officer, Disability and LGBT Rights, Trade Unions Congress	

**	George Selvanera, Business Disability Forum	
**	Gwynneth Pedler, Transport for All	QQ 79–90
**	Graham Pendlebury, Director Local Transport, Department for Transport	
**	Keith Richards, Chair, Disabled Persons Transport Advisory Committee	
**	Simon Posner, Chief Executive, Confederation of Passenger Transport	QQ 91–96
**	David Sindall, Association of Train Operating Companies	
**	Jonathan Fogerty	QQ 97–104
**	Doug Paulley	
**	Paul Breckell, Chair Disability Charities Consortium/ Chief Executive, Action on Hearing Loss	QQ 105–112
**	Kate Copley, Deputy Director in the Education Funding Agency's Academy Operations team, Department for Education	QQ 113–122
**	Lesley Cox, Ofsted national lead for Special Educational Needs, Ofsted	
**	Ann Gross, Director responsible for policy on Special Needs, Children in Care, Adoption and children's mental health, Department for Education	
**	Claire Jackson, Legal team member, Independent Parental Special Educational Advice (IPSEA)	
**	Flora Goldhill, Director for Children, Families & Communities, Department of Health	QQ 123–130
*	John Holden, Director of Policy, Partnerships and Innovation, NHS England	
**	Sally Warren, Deputy Chief Inspector of Adult Social Care, Care Quality Commission	
**	Justin Bates, Vice-Chair, Housing Law Practitioners Association	QQ 131–140
**	Bob Ledsome, Deputy Director, Building Regulations and Energy Performance, Department for Communities and Local Government	
**	Councillor Jonathan McShane, Cabinet Member for Health, Social Care and Culture, Local Government Association	
**	Rachel Smalley, expert in inclusive design and access for disabled people	
**	Martin Phelps, Management Committee Treasurer, Lewisham Shopmobility Scheme	QQ 141–146

*	Marie-Claire Frankie, a solicitor for Sheffield Council, representing the National Association of Licensing and Enforcement Officers (NALEO)	QQ 147–156
*	Mick Martin, Managing Director and Deputy Ombudsman, Parliamentary and Health Service Ombudsman (PHSO)	
*	Neil Crowther, independent consultant, formerly director of disability and human rights programmes at the Equality and Human Rights Commission	QQ 157–165
**	Nick O'Brien, independent consultant, former Director of Legal Operations at the Disability Rights Commission and expert in Ombudsmen	
**	Jeanine Blamires	QQ 166–173
*	David Blamires	
**	Andrew Brenton	
**	Michèle Brenton	
**	Emily Holzhausen OBE, Director of Policy and Public Affairs, Carers UK	
*	Andrew Jones MP, Parliamentary Under Secretary of State, Department for Transport	QQ 174–192
**	Rt Hon Nicky Morgan MP, Secretary of State for Education and Minister for Women and Equalities, Department for Education	
**	Justin Tomlinson MP, Parliamentary Under Secretary of State for Disabled People, Department for Work and Pensions	

Alphabetical list of all witnesses

	Access Association	EQD0106 EQD0202
	Action Disability Swindon	EQD0036
	Action for M.E.	EQD0117
**	Action on Hearing Loss (QQ 105–112)	EQD0128
	Martin Affleck	EQD0016
	Dr Rachel Aldred	EQD0107
	Alliance for Inclusive Education	EQD0110
	Arfon Access Group	EQD0142
	Aspire	EQD0025
	Assistance Dogs UK	EQD0081
	Association of Colleges	EQD0073
*	Association of Convenience Stores (QQ 72–78)	
	Association of National Specialist Colleges	EQD0123

**	Association of Train Operating Companies (QQ 91–96)	EQD0174 EQD0179
	Attitude is Everything	EQD0146
	Autistic UK	EQD0170
**	Bar Council (QQ 43–51)	EQD0161
**	Barclays Bank (QQ 72–78)	EQD0175
	Aline Bearup	EQD0118
**	David Blamires (QQ 166–173)	EQD0197
**	Jeanine Blamires (QQ 166–173)	EQD0171 EQD0197
	Judith Bond	EQD0087
	Breakthrough UK	EQD0065
**	Andrew Brenton (QQ 166–173)	EQD0095
**	Michèle Brenton (QQ 166–173)	EQD0096
**	British Deaf Association (QQ 66–71)	EQD0101
	British Psychological Society	EQD0103
	Bus Users UK South West	EQD0070
**	Business Disability Forum (QQ 72–78)	EQD0093
	Cambridgeshire Hearing Help	EQD0022
**	Care Quality Commission (QQ 123–130)	EQD0177
**	Carers UK (QQ 166–173)	EQD0060 EQD0193
	Challenging Behaviour Foundation	EQD0153
	Changing Faces	EQD0131
	Comet Group	EQD0077
*	Confederation of Passenger Transport (QQ 91–96)	
	Crawley Town Access Group	EQD0026
*	Neil Crowther (QQ 157–165)	
	Deaf Ex-Mainstreamers Group	EQD0150
	Natalya Dell	EQD0005
**	Department for Communities and Local Government (QQ 131-140)	EQD0191 EQD0201
**	Department for Education (QQ 113–122)	EQD0189
**	Department for Transport (QQ 79–90)	EQD0186
*	Department for Work and Pensions (QQ 1–13)	
**	Department of Health (QQ 123–130)	EQD0183
*	Disability Charities Consortium (QQ 105–112)	
	Disability Dynamics Ltd.	EQD0054

	Disability Law Service	EQD0051
	Disability Politics UK	EQD0056
**	Disability Rights UK (QQ 14–26)	EQD0105
**	Disabled Persons Transport Advisory Committee (QQ 79–90)	EQD0094
**	Discrimination Law Association (QQ 43–51)	EQD0129 EQD0172 EQD0203
	Diverse Cymru	EQD0109
	Down's Syndrome Association	EQD0115
	Clive Durdle	EQD0048
	Elcena Jeffers Foundation	EQD0108
	Sally Elliot	EQD0085
**	Equality and Human Rights Commission (QQ 27–42)	EQD0083 EQD0145 EQD0190 EQD0196 EQD0200
	Equity	EQD0064
	Essex County Council	EQD0039
	Clive Evans	EQD0010
	J L Evans	EQD0114
	Professor Ralph Fevre	EQD0130
	FirstGroup plc	EQD0133
**	Jonathan Fogerty (QQ 97–104)	EQD0152 EQD0184
	Anthony Gorham	EQD0031
**	Government Equalities Office (QQ 1–13)	EQD0011 EQD0014 EQD0113 EQD0169 EQD0173
	Jamie Grace	EQD0028
	Grapevine	EQD0079
	Guide Dogs	EQD0041 EQD0195
	Anthony Hall	EQD0046
	Nicholeen Hall	EQD0017
	Jade Hamnett	EQD0140
	John Harrold	EQD0003

	Martin Henwood	EQD0044
	Hertfordshire Action on Disability	EQD0024
	Hertfordshire Equality Council	EQD0120
	Hft (Voices to be Heard)	EQD0020
	Becky Hime	EQD0034
**	HM Government (QQ 174–192)	EQD0121
	Matt Hodges	EQD0001
**	Housing Law Practitioners Association (QQ 131–140)	EQD0143
	Inclusion London	EQD0075
	Inclusion Scotland	EQD0082
**	Independent Parental Special Education Advice (IPSEA) (QQ 113–122)	EQD0040
*	Andrew Jones MP, Department for Transport (QQ 174–192)	
	Anna Kennedy	EQD0023
	Kidz Aware	EQD0049 EQD0050
	Peter Lainson	EQD0071
**	Law Centres Network (QQ 43–51)	EQD0135 EQD0166 EQD0203
**	The Law Society (QQ 43–51)	EQD0162
	Law Society of Scotland	EQD0063
	Christopher Lee	EQD0111
	Leigh Day Solicitors	EQD0135
	Leonard Cheshire Disability	EQD0042
	Level Playing Field	EQD0141
**	Lewisham Shopmobility Scheme (QQ 141–146)	EQD0015 EQD0185
**	Local Government Association (QQ 131–140)	EQD0194
	Lord Low of Dalston	EQD0165
	Manchester Disabled Peoples Access Group	EQD0092
	Gerry McFeely	EQD0119
	Professor David McLoughlin	EQD0124
	Peter McTigue, Nottingham Trent University	EQD0021
	The Mental Health Foundation	EQD0030
**	Mind (QQ 52–59)	EQD0147
	Mobility Issues Group for Goring and Streatley	EQD0151

**	Rt Hon Nicky Morgan MP, Minister for Women and Equalities (QQ 174–192)	EQD0199
	Neil Mukherjee	EQD0029
	Muscular Dystrophy UK	EQD0052
	National AIDS Trust	EQD0136
	National Association of Deafened People	EQD0061
	National Association of Disabled Staff Networks	EQD0156
*	National Association of Licensing and Enforcement Officers (QQ 147–156)	
	National Deaf Children's Society	EQD0053
	Newcastle Society for Blind People	EQD0100
	NHS Centre for Equality and Human Rights	EQD0104
*	NHS England (QQ 123–130)	
	Nuffield Council on Bioethics	EQD0012
	Nuneaton and Bedworth Borough Council	EQD0007
**	Nick O'Brien (QQ 157–165)	EQD0188
**	Ofsted (QQ 113–122)	EQD0187
	Emma Ogden	EQD0033
	Oxfordshire Transport and Access Group	EQD0038
*	Parliamentary and Health Service Ombudsman (QQ 147–156)	
**	Doug Paulley (QQ 97–104)	EQD0097 EQD0176
	Damian G. Pavillard	EQD0168
**	Gwynneth Pedler (QQ 79–90)	EQD0078 EQD0182
	Pembrokeshire People First	EQD0057
**	People First (Self Advocacy) (QQ 60–65)	EQD0134
	Plumstead Community Law Centre	EQD0137
	Portsmouth Disability Forum	EQD0084
	Stephen Prince	EQD0019
	Public Interest Research Unit	EQD0069
	RCT People First	EQD0080
	Reclaiming Our Futures Alliance	EQD0089
	Gerald Reilly	EQD0035
	Royal College of Nursing	EQD0059
	Royal Mencap Society	EQD0157

**	Royal National Institute of Blind People (RNIB) (QQ 14–26)	EQD0164 EQD0181 EQD0192
	The Salvation Army	EQD0112
	Catherine Scarlett	EQD0004
**	Scope (QQ 52–59)	EQD0158
	Scottish Disability Equality Forum	EQD0167
	Sense	EQD0122
	Sheffield Citizens Advice and Law Centre	EQD0102
	Signature	EQD0066
**	Rachel Smalley (QQ 131–140)	EQD0202
	Carol Smith	EQD0072
	Thomas Pocklington Trust	EQD0099
	Thurrock Coalition	EQD0068
	Rebecca Thursby	EQD0098
**	Justin Tomlinson MP, Department for Work and Pensions (QQ 174–192)	EQD0198
	Toucan Diversity	EQD0144
**	Transport for All (QQ 79–90)	EQD0116 EQD0178
**	Trades Union Congress (TUC) (QQ 72–78)	EQD0055
	UK Learning Disability Consultant Nurse Network	EQD0149
	Unity Law	EQD0127
	University of Leeds	EQD0125
	Brian Wakeling	EQD0008
	Louise Whitfield	EQD0090
	Kate Whittaker	EQD0160
	WOWpetition/campaign	EQD0006
	Robert Wright	EQD0013
	Catherine Yates	EQD0155
	York People First	EQD0067
	Jane Young	EQD0009

APPENDIX 3: CALL FOR EVIDENCE

The Select Committee on the Equality Act 2010 and Disability was set up on 11 June 2015, primarily with the task of conducting post-legislative scrutiny of that Act. Its remit however is narrower: it is "to consider and report on *the impact on people with disabilities* of the Equality Act 2010". The Committee will therefore be looking at the Act, to see whether it is satisfactorily governing the matters which Parliament intended it to, but only in relation to people with disabilities. In doing so the Committee will be looking at the provisions of the Act but also at its implementation. The Committee has to report by 23 March 2016.

This is a public call for written evidence to be submitted to the Committee. The deadline is 4 September 2015.

This call for evidence will also be available in an Easy Read version on the Committee website at the link below. If you require other adjustments to enable you to respond please contact the Committee team: details also below.

It is helpful if opinions are supported by factual evidence where appropriate.

The Equality Act 2010 was intended to "harmonise discrimination law and strengthen the law to support progress on equality." It brought together a number of pieces of equality legislation into one Act, including the Disability Discrimination Act 1995. It protects against discrimination on the grounds of the 'protected characteristics' of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and requires reasonable adjustments to avoid putting disabled people at a "substantial" disadvantage.

These provisions apply to both the public and private sectors in respect of employment, education, housing, goods and services, public services and transport. The Act also contains a duty on public authorities to "have due regard" to the need to eliminate unlawful discrimination, advance equality, and foster good relations: 'the public sector equality duty'.

The Committee would welcome general views on whether the Act has achieved these objects for people with disabilities. It would in particular welcome views on the following issues. You need not address all these questions.

General

(1) Has the Equality Act 2010 achieved the aim of strengthening and harmonising disability discrimination law? What has been the effect of disability now being one of nine protected characteristics?

(2) Are there gaps in the law on disability and equality not covered by the Equality Act 2010 or other legislation?

Reasonable adjustment

(3) Are the reasonable adjustment duties known and understood by disabled people, employers, service providers and others who have duties under them? How does this apply in the specific cases of public transport, taxis, education and access to sports grounds?

(4) Should the law be more explicit on what constitutes a reasonable adjustment? If so, in what way?

Public Sector Equality Duty

(5) How effective has the public sector equality duty been in practice? How do you assess its contribution to the aims of the Equality Act 2010?

(6) What has been the impact of the different approaches in England, Wales and Scotland to the specific duties designed to support the general public sector equality duty? Have the specific duties supported implementation for disabled people?

Oversight and enforcement

(7) Does the division of responsibilities between Ministers and government departments affect the effective implementation of the Equality Act 2010 in respect of disability?

(8) How effective has the Equality and Human Rights Commission been in exercising its regulation and enforcement powers, and what contribution has this made to the impact of the Equality Act 2010 on people with disabilities?

(9) Could other regulatory bodies with a role in the effective implementation of the Equality Act 2010, such as inspectorates and ombudsmen, play a more significant part?

(10) Are the current enforcement mechanisms available to private individuals (through Employment Tribunals, County Courts and, in Scotland, Sheriff Courts) accessible and effective for people with disabilities, employers and providers of goods, facilities and services?

(11) Are there other legislative or non-legislative measures that would improve implementation of the Equality Act 2010 in respect of disability?

APPENDIX 4: NOTE OF VISIT TO REAL

Overview of the visit

The Committee visited the offices of Real, a disabled people's organisation based in Tower Hamlets, on 15 September 2015. Before the Committee arrived, service users and those from Real's partner organisations attended a briefing session explaining the Equality Act 2010 and answering any questions they had about the Committee and its inquiry. During the visit the Committee received a tour of the offices, heard from staff and met with a range of Real's service users and partner organisations.

Introduction and tour

Mike Smith, the Chief Executive, explained that Real is a user-led organisation run and controlled by disabled people in the London Borough of Tower Hamlets: all of Real's Board Members and 75% of front line staff are disabled people. He told the Committee that Real supports people with any type of impairment or disability, and from any ethnic, gender, sexual orientation, faith or age group. Support was offered in English, Bengali, Sylheti (a language originating from Bangladesh) and Somali by a diverse group of staff, providing important advantages for accessibility. Following the introduction, staff from four of Real's key service areas gave the Committee an outline of their work.

Information, Advice and Advocacy

Real had led a consortium of organisations to bid for the information, advice and advocacy contract with the local authority, including under the Care Act 2014. They were able to achieve this in part because Real happened to have significant in-house commercial expertise, and in part because the local authority had been willing to allow the partners the time needed to form the consortium. This was a front line service, with support available in person, by telephone and online.

One-to-one advocacy

The Committee heard from an individual advocate. He explained 'advocacy' as a form of supported decision making, whereby the advocate works with the person to look at the available options and their consequences. Advocacy needed to be tailored to the individual, and be able to respond to the cumulative impact of a range of causes of disadvantage. The aim was empowerment, enabling the person to make the decision rather than making it for them, and the ideal end of the advocacy relationship was that the person no longer needed support. The example was given of an individual in need of housing. The person had multiple needs, and multiple agencies were involved. This risked the client falling between the gaps, and brought significant communication challenges which the advocate was able to assist with—including communicating with the agencies when the client was unable to do so themselves because of their complex needs.

Support to manage Direct Payments

One of the direct payments workers explained that direct payments offered a means for disabled people to obtain care appropriate to their needs. The staff member gave the example of a man for whom inflexibility in his care arrangements prevented him from attending the Mosque on a Friday. He had used his direct payments to change the days on which care was provided and for a personal assistant to support him to attend the Mosque, allowing him to fulfil his religious duties and to feel a part of his local community.

Local Voices

'Local Voices' is a network of local disabled people, supported by Real but with their own identity. The member of staff supporting the network explained that it acted as a consultation group for the local authority in Tower Hamlets and other public bodies. An example of work undertaken was with the Docklands Light Railway. While the DLR described itself as fully accessible, local disabled people felt that this was not the case. Local Voices undertook a study and produced a report outlining the remaining problems, which were mainly signage, communications and attitudinal. The report was sent to TfL and, while the group reported that they were disappointed with an apparent lack of engagement from the DLR, they had observed that one or two of the recommendations were beginning to be implemented.

Small group discussion: Key themes

Following the tour, the Committee members took part in a series of small group discussions with local disabled people on topics that participants had decided they wanted to discuss with the Committee. The discussion in these working groups is summarised below.

Discrimination in Employment

Accessing employment was one of the biggest concerns amongst the individuals the Committee met at Real's offices. Participants had a strong desire to work, and didn't want to be in receipt of benefits. Some commented that they were well-educated, having attended university, and had experience. However, they felt they were denied the opportunity to work, both by employers and by job centres.

One participant acquired a disability whilst in employment, as a result of an accident. He described his employer as unhelpful, failing to put in place recommended adjustments and adaptations, and as preferring that he retire rather than return to work. He only discovered that he could have had access to an adviser once he had left the organisation. He felt that the assessments he did have focussed on his inability to carry out certain tasks, failing to acknowledge the tasks he could do in the workplace. Another participant described his employers' lack of understanding regarding his disability, particularly a tendency to adopt a 'one size fits all' approach. Some thought that the concept of reasonable adjustment was too vague and open to interpretation, leading to differences in what the employer and employee/potential employee believed was 'reasonable'. Some also felt that their need for reasonable adjustments might put them at a disadvantage during the selection process, making it difficult to decide whether to disclose their disability.

Poor treatment in job centres was a recurring theme. One participant commented that the job centre failed to acknowledge the impact of her disability. They had expected her to attend appointments and assessments in person which were either too far away to travel to, or that lacked flexibility when the impact of her disability meant that she was unable to attend. Participants felt there was a lack of understanding about disabilities which could be 'hidden' or not immediately obvious. Some felt that job centres were more about penalising job-seekers than helping them obtain employment.

Treatment when receiving goods or services

Individuals spoke of many barriers to accessing goods and services. Local authorities, public services and private companies were criticised for a lack of understanding, communication and training, and for poor awareness of their responsibilities to

provide adjustments. Several participants reported discriminatory, threatening or violent behaviour. Many felt that the court system could be a costly process with very little chance of a successful resolution, leaving them without any route for redress. The Equality Advisory Support Service was unknown to most of the group, and the few that knew about it said they would never have considered using it or know how to find the number.

The group agreed that there needed to be a greater understanding that being disabled was not synonymous with a wheelchair. One participant, who had restricted movement in their arms, had difficulty using telephone menus to speak to companies. Others spoke of the difficulties caused by companies relying on email and online services, which many did not have access to. Form filling was problematic for many, with help only available via expensive premium rate numbers. A member of staff at Real said that this issue could put time and financial strains on organisations like theirs, as people relied on them to help get past these barriers.

Although people felt that accessibility of transport in London was better than other areas, criticism was targeted at buses, taxis, the London Underground, and the DLR. On the underground, participants were angry that 'improvements' were being made at stations, and yet they still lacked step-free access—citing the examples of Shepherds Bush and Shadwell stations. The DLR was criticised for claiming to be entirely step-free—in practice access could be poor and one member of the group had broken two wheelchairs whilst using the line. Pushchairs taking up wheelchair spaces on buses was reported as a problem, as was bus drivers refusing access because their ramp was not working. On a more positive note, the group felt that taxi services had improved in London for disabled people, with direct discrimination from taxi drivers now less common.

Lack of adjustments, particularly steps and a lack of ramps, were considered a particular problem at restaurants and high street stores. Many had been told by shop staff that the council would not allow them to put a ramp outside, or that there was not enough space inside to accommodate one. One participant had taken this up with their local council, and found it not to have been true, leading to a feeling of having been discriminated against. Another participant told the group how a well-known coffee chain had removed their disabled toilet at his local shop as it was "underused". For some, the lack of access to services such as banks and pharmacies had led to a lack of independence. One person described how they were served on the street with personal information being shared, because they could not get past the front step.

There was agreement amongst the group that universities, libraries (particularly their outreach services), and arts and culture sites were doing well, and participants used them regularly. There were also positive comments made about the work listed buildings were doing to allow better disabled access, despite the planning restrictions placed on them.

Reasonable adjustments

Experiences of reasonable adjustments in services were mixed. One participant gave the example of a shop where the security staff were happy to allow her to leave her personal trolley at the entrance, because she had difficulty manoeuvring it around the aisles alongside her shopping. On the other hand, when she used the disabled checkout to pay for her goods the shop assistant "looked me up and down and said 'you're not disabled'" because she was not in a wheelchair. Another

participant had been refused a support person, because they had brought someone to help them in the past, and it was therefore expected that they would do so in the future.

Participants reported that people often made assumptions about whether or not they were 'disabled enough', including for those with physical disabilities that were not immediately visible. Some felt that there was a responsibility on a person whose disability was less obvious or less well known to inform people of their disability and needs. Others felt that this could be degrading, involving explaining intimate details like why they needed help going to the bathroom, or mean explaining things that to a disabled person were common sense.

It was agreed that some reasonable adjustments required more thought than others and could be about attitude, not just physical changes. The participant who shared her experience in the shop had insisted on talking to the manager, who had apologised but 'backed off' when she offered to help them access training.

Experiences in employment also varied, and the group felt that 'employers are as varied as we are'. There were examples of good practice by employers in making adjustments, which could sometimes be as simple as leaving a window open during the day. One participant talked about a very good experience of reasonable adjustment for a mental health condition that required a lot of flexibility in her working days and hours. She felt, however, that she got the adjustments because she worked for a good practice employer and was able to articulate her needs. She was aware of others with mental health problems who had lost their jobs but been unable to explain what reasonable adjustments they would have needed. As with access to services, the group acknowledged that it might be necessary to explain things to employers, but felt that the idea of educating your employer could be a difficult one. Many people also found it difficult to be assertive with employers.

The group felt that recent changes to Access to Work were a problem, with people experiencing reduced support levels, and a perceived contradiction between Government messages on wanting disabled people to work and poor implementation of the reasonable adjustment duty in practice.

Knowledge of rights and access to redress

The most common way people found out about their rights was through word of mouth, and then they were only interested in knowing their rights when they encountered a problem. In the past people would have gone to the Citizens Advice Bureau, but cuts meant that this was no longer possible. People felt that they probably had more rights under the Equality Act than they had had under the Disability Discrimination Act, but that they knew less about them and so felt that they were worse off. The 'ambiguity' created by the title 'Equality Act' was considered to be part of the problem.

The group discussed when they would consider it necessary to assert their rights. Some felt that small incidents that occurred regularly could be ignored, while others felt that often small, repeated, problems could be highly significant and that 'letting things slide' could lead to problems escalating. Doing things through the legal system was too difficult and slow, and participants said that they would only try to do so for something very serious. Cuts in legal aid had also had an impact and people felt anxious about challenging service providers that they were reliant on.

A recurring theme during this discussion was that complaints procedures were often ineffective, drawn out over many years and months, with little or no action taken as a consequence. Such procedures were an additional burden on participants when facing the daily reality of their disability, and their ineffectiveness drove many to consider what they felt to be 'drastic' measures, such as self-funded legal action. Participants also wanted to see more action from the local authority to hold companies or organisations to account.

Most found it difficult to get things changed, often because they simply did not know who to go to. Many people just accepted what they were told by people in authority. The group felt that those who did not know enough to challenge, and were not expected to 'fight back', got the worst services—particularly those with lower education or poor English-language skills. People had been told that they should be grateful for the services they received, rather than that they had a right to them. Real had supported a service user threatening to disengage from services as a protest over the actions of his local authority, endangering himself. Following advice from Real he was able to complain effectively, including gaining help from his MP.

One participant described his continued efforts to ask a local confectionary shop to install a ramp. His request was repeatedly noted, although no action was taken. Another had complained to her social landlord regarding discriminatory, antisocial behaviour by her neighbours. After three years and no action she made provision to fund a court case herself. It was only after the threat of legal action that the landlord took action.

Some felt able to assert their rights—one participant had been a local government councillor, and so knew who to go to, and they knew him. However, even he reported that it would not have occurred to him to look for legal enforcement or to have asked for specialist advice from the Equality and Human Rights Commission. He also reported that while he found it easy to advocate for others, he found he needed the support of an advocate when he was complaining on his own behalf, as he would get too angry.

APPENDIX 5: RECOMMENDATIONS REQUIRING LEGISLATIVE CHANGES

(Paragraph numbers refer to the report)

Equality Act 2010

Primary legislation needed

Section 124: restore the original wording, to reinstate the power of employment tribunals to make wider recommendations, with the consequential repeal of section 2 of the Deregulation Act 2015 (Paragraph 416)

Section 138: restore the statutory questionnaire procedure, with the consequential repeal of section 66 of the Enterprise and Regulatory Reform Act 2013 (Paragraph 410)

Section 149: add a subsection to amplify the public sector equality duty of a public authority to "have due regard" to the matters listed in subsection (1) (Paragraph 346)

Commencement Orders with transitional provisions needed

Section 14: dual discrimination (Paragraph 439)

Section 36: adjustments to common parts (Paragraph 244)

Part 12: the provisions in Chapter 1 on taxis not so far commenced, including section 165 (Paragraph 311)

Other primary legislation needed

Accessible Sports Grounds: a Government Bill to give effect to the provisions of the Bill which the Government blocked on second reading in the House of Commons on 11 March 2016 (Paragraph 248)

Class actions: a provision in an appropriate Bill allowing charities and other bodies which do not themselves have a legal interest to bring proceedings in the interests of classes of disabled people who are not themselves claimants (Paragraph 434)

Conciliation: restore the EHRC's conciliation powers under section 27 of the Equality Act 2006, with the consequential repeal of section 64(1)(b) of the Enterprise and Regulatory Reform Act 2013 (Paragraph 450)

Ombudsmen: amendments to the statutory provisions setting out the mandates of those regulators, inspectorates and ombudsmen that deal with services most often accessed by disabled people, to make the securing of compliance with the Equality Act 2010 a specific statutory duty (Paragraph 461)

Licensing Act 2003: amend section 4(2) to make a failure to comply with the Equality Act 2010 a ground for refusing a licence (Paragraph 473)

Other secondary legislation needed

Orders under section 14(8)(b) of the Equality Act 2006 giving statutory effect as Codes of Practice to (a) the Technical Guidance issued by the EHRC on the PSED, Schools and Further and Higher Education, and (b) a new Code of Practice on Reasonable Adjustments (Paragraphs 164 and 231)

Public Service Vehicles Accessibility Regulations 2000: amend to require the fitting of audio-visual annunciators to all new vehicles (Paragraph 293)

Equality Act 2010 (Specific Duties) Regulations 2011: revoke and replace to give effect to the recommendations in Paragraphs 360–361

Civil Procedure Rules 1998: amend Part 44 to give effect to the recommendation on the application of Qualified One-way Costs Shifting to discrimination claims under the Equality Act 2010 (Paragraph 402)

Equality Act 2010 (Disability) Regulations 2010: amend regulation 4(1) so that a tendency to physical abuse of other persons ceases to be treated as not amounting to an impairment for the purposes of the definition of 'disability' (Paragraph 503)

APPENDIX 6: ACRONYMS

ACAS	Advisory, Conciliation and Arbitration Service
ADHD	Attention deficit hyperactivity disorder
ATE	After-the-event insurance
ATOC	Association of Train Operating Companies
BDA	British Deaf Association
BDF	Business Disability Forum
BSL	British Sign Language
CFA	Conditional fee agreement
CJEU	Court of Justice of the European Union
CLA	Community Legal Advice
CPR	Civil Procedure Rules
CQC	Care Quality Commission
CRE	Commission for Racial Equality
DDA	Disability Discrimination Act 1995
DED	Disability Equality Duty
DFLE	Disability-free life expectancy
DLA	Disability Living Allowance
DLR	Docklands Light Railway
DPTAC	Disabled Persons Transport Advisory Committee
DRC	Disability Rights Commission
DVSA	Driver and Vehicle Standards Agency
DWP	Department for Work and Pensions
EA	Equality Act 2010
EASS	Equality Advisory and Support Service
EAT	Employment Appeal Tribunal
ECHR	European Convention on Human Rights
EHRC	Equality and Human Rights Commission
ELBA	Employment Law Bar Association
EOC	Equal Opportunities Commission
ET	Employment Tribunal
EU	European Union
FA	Football Association
GEO	Government Equalities Office
HLE	Healthy life expectancy
ILF	Independent Living Fund

IPSEA	Independent Parental Special Educational Advice
JCHR	Joint Committee on Human Rights
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LE	Life expectancy
LGBT	Lesbian, gay, bisexual, and transgender
M.E	Myalgic Encephalomyelitis, also known as chronic fatigue syndrome
NALEO	National Association of Licensing and Enforcement Officers
NDCS	The National Deaf Children's Society
NDPB	Non-departmental public body
NEET	Not in education, employment or training
NHS	National Health Service
ODI	Office for Disability Issues
ONS	Office for National Statistics
PHV	Private hire vehicle
PIP	Personal Independence Payment
PIRU	Public Interest Research Unit
PSED	Public Sector Equality Duty
PSV	Public Service Vehicles
PSVAR	Public Service Vehicle Accessibility Regulations
QOCS	Qualified one-way costs shifting
RNIB	Royal National Institute of Blind People
RRA	Race Relations Act 1976
SDA	Sex Discrimination Act 1975
SEN	Special educational needs
SSCS	Social Security and Child Support
TfL	Transport for London
TUC	Trades Union Congress
UKIM	UK Independent Mechanism
UNCRC	UN Convention on the Rights of the Child
UNCRPD	UN Convention on the Rights of Persons with Disabilities